

THE REGIME OF
THE INTERNATIONAL RIVERS:
DANUBE AND RHINE

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SUBMITTED IN PARTIAL FULFILMENT OF THE REQUIREMENTS
FOR THE DEGREE OF DOCTOR OF PHILOSOPHY
IN THE
FACULTY OF POLITICAL SCIENCE
COLUMBIA UNIVERSITY

NEW YORK
1923

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PREFACE

THE material for this study of the Rhine and the Danube in international relations was, in large part, collected for the use of the Inquiry created by President Wilson for the study of questions affecting the peace. Parts of it were printed by the State Department as an official document, and the Department has kindly consented to a free use of the document in this work.

It was clear that an understanding of the problems of the Rhine and Danube was impossible without some knowledge of the history of previous attempts to harmonize conflicting interests on the rivers or to gain control of these important pathways of trade and empire, and also some knowledge of the economic conditions existing at various periods. Without such a basis the changes in river law and river institutions would be impossible to understand, and there would be great danger of a false interpretation of the reasons for the success of certain river commissions or too hurried an acceptance of a plan which had worked out well in one locality, as suitable everywhere. This work has been done, however, from the standpoint of the lawyer, not of the economist or historian, as an effort to explain international law and international organization in process of development, and the historical and economic material is only so far considered as appeared necessary for an understanding of the varying legal situations. The main thread of the story of international rivers is the recognition of the importance to the riparian community of free navigation, and the reconciliation of this common interest with the control by each riparian state of its own territory, even its fluvial territory.

An interest even of non-riparian states is implied in both streams, and the extent to which it was made practical and to which it can be justified, is worth following in a time in which respect for the independence of small nations and greater international action by the concert of the world are both urged. In the progress of the communities of river states, organized only so far as seemed necessary for the assurance of the recognized common interest, and only including those governments which were directly interested, a middle ground appears of a localized common action by those vitally concerned.

This development of local control is worth studying as an institution which has long existed in response to a need of international society, and as a likely avenue of future international progress

Freedom of navigation and commerce on international waterways has become merged in the wider question of freedom of transit on land as well as waterways. Perhaps even airways may be included. This it returns to where Grotius placed it with no distinction between any commercial routes, only laying down the principle that merchants should be free to come and go in carrying on that trade between peoples, on which is based the hope for permanent peace. The negotiators of the Treaty of Paris in 1814, regulating the affairs of a continent, and laying down a general principle to be applied alike to victor and to vanquished, provided in their treaty that international rivers should be free "with a view to facilitate the communication between nations and continually to render them less strangers one to another." The negotiators of the Treaty of Versailles in 1919 applied the thought of their predecessors to new conditions arising from the use of railways, by directing the members of the League of Nations to "make provision to secure and maintain freedom of communication and transit and equitable

treatment for the commerce of all members of the League” (23 e).

This is as it should be, but there remain, nevertheless, certain special difficulties which will be encountered in respect to international rivers, and what those difficulties are, can best be determined by considering what they have been found to be, or how they shall be met, by a knowledge of the means devised by human ingenuity in the past to obviate them. The Convention of Barcelona on Freedom of Transit has recognized the distinction, which deals with matters of administration rather than principle, and the decisions there come to may need further revision in the light of experience. This study goes only through the World War and includes the terms of the Peace Treaties.

The author recognizes not only his small share in the debt owed by all American students of international law or diplomacy, to Professor John Bassett Moore, but also his personal obligation for the friendly counsel by which he has so much benefited. He also gratefully acknowledges the valuable suggestions as to historical method and sources from Professor James Shotwell, without which this work would have had an entirely different construction. The aid given by Miss Mudge, of the Columbia Library, not only lightened the labor of collecting material, but revealed documents which would have escaped the search of one not primarily a student of history.

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PART I
THE DANUBE

CHAPTER I

GEOGRAPHY

THE Danube runs from the Black Forest to the Black Sea. It is formed by the junction of two small streams, the Brigach and Breg, just below Donaueschingen in the German state of Baden, at a point 2,200 feet above sea level. It runs in an easterly direction across the German states of Wurtemberg, in which, at the city of Ulm, it becomes navigable, and Bavaria, where, at Ratisbon, regular navigation commences, then, after leaving the port of Passau, enters Austria, whose capital, Vienna, is a river town. As political geography existed before the World War, the Danube then traversed Hungary from west to east, then north to south, with Budapest, the Hungarian capital, on its banks, and after crossing the Hungarian Jugo-Slav territory it became the boundary between Hungary and Serbia, changing its course again to an easterly direction. Belgrade, in Serbia, is the third capital on its shore.

The most serious natural impediment to navigation on the river, the Cataracts and Iron Gates, begins in the lower part of the former Serbo-Hungarian boundary. The river here breaks through the Carpathians from the Hungarian to the Roumanian plains, in a winding course. From Bazias, where it leaves the Hungarian plain, to Turnu-Severin in the Roumanian—100 km. as the crow flies—the river's course is 157 km. and from Moldowa, where the Cataracts become dangerous, to Turnu-Severin, the total fall is 29

meters.¹ This fall, however, is divided into a number of rapids, the worst of which are the famous Iron Gates.

Just above the Iron Gates Roumania succeeded to Hungary as riparian on the north bank. Bulgaria followed Serbia as southern riparian until the river turns northeast, when both banks become Roumanian above Tutrakan, then turns north till it reaches the mouth of the Pruth, whence its general course is easterly into the Black Sea. The river enters the sea by three mouths, the Kilia, the most northern, the Soulina, and the St. Georges, the southern mouth. Sixty-three per cent of the water of the river passes through the Kilia, 30 per cent through the St. Georges, and 7 per cent through the Soulina, mouth.² The large amount of mud which the Danube brings down in its course creates banks at the mouth of the river, which accumulate particularly rapidly in the tideless Black Sea, subject to east winds which tend to back up the mud-carrying water at the mouths of the river and there precipitate their contents. As a consequence the arm of the river containing the least water, which contains also the least mud and, therefore, creates the least important bar, is the most easily rendered navigable.

The river formed the boundary between Roumania and Russia from the mouth of the Pruth, and the Russian territory continued along the northern bank of the Kilia arm of the delta to the point where the Kilia itself divides into a delta through which it reaches the sea. Of the Kilia delta all but the southermost mouth, the Stari Stamboul, were Russian territory. The southern bank of the Kilia and the whole of the St. Georges and Soulina Channels were Roumanian.

¹ Demorgny, *La Question du Danube* (Paris, 1911), pp. 10, 11.

² Kende, *Die Danaustrasse*, *Weltwirtschaftliches Archiv* X, 1917, p 245.

The length of the river is given in the following table.¹

Baden into Tutlingen	45	} 608
Wurtemberg	203	
Bavaria	360	
Austria	356	
Hungary	941	
Roumania	950	
Total		2,855

The German States and Austria held both banks of the river where it touched their territory, as did Hungary except where the river formed her boundary with Serbia. Serbia was riparian for 355 km., Bulgaria, for 400 km. on the south bank, and Russia for 151 km. on the north. Roumania held the bank opposite Bulgaria and Russia. On both banks Roumania held 1,412 km.

A very large part of Austria and nearly the whole of Hungary were in the basin of the Danube. Its most important inland navigable connections were in Hungary where 1,608 km. of navigable waterways are tributary to it. Northern Serbia is also in part commercially dependent upon the Danube and so is northern Bulgaria, while the Danube is the life of the trade of Roumania. The sole tributary now navigable in the lower course of the Danube, the Pruth, formed the boundary between Russia and Roumania. The only ports in Bessarabia are its ports upon the Danube.

The breakup of the Austro-Hungarian Monarchy as a result of the defeat of the central powers in the Great War has made important changes in the political map of the Danube Valley. The German territorial divisions are unchanged and the river enters the territories of the new re-

¹ Baicoianu, *Le Danube* (Paris, 1917), p. 18. These figures are slightly different in different authors, but approximate the same.

public of Austria at Passau, crosses Austria and forms the boundary between Austria and Czecho-Slovakia, then between Hungary and Czecho-Slovakia, till near Gran it enters the Hungarian territory. The important port of Presburg is Czecho-Slovak. The river crosses Hungary in a southerly direction and enters the new kingdom of the Serbs, Croats, and Slovenes, through whose lands it passes till it becomes the boundary between their kingdom and Roumania. The famous Iron Gates and the long stretch of rapids are in this boundary reach of the river and so are jointly controlled by these kingdoms. As before, the river forms the boundary between Bulgaria and Roumania till it turns north running into Roumanian territory and then east again into the Black Sea. A very important event in Danube history was the cession of Bessarabia to Roumania by Russia so that Russia is no longer riparian and Roumania is local sovereign in the entire Danube Delta. The cession of Bessarabia and of Transylvania from Hungary puts the whole navigable course of the Pruth also in Roumanian territory.

The river runs from a region of high industrial development—the German Empire and Austria—into an agricultural territory which before the war had become an increasingly good market for the products of the upper river factories. The valuable Roumanian petroleum deposits lie near its shores and the Carpathian Mountains which cross its valley are heavily forested. It empties into the Black Sea which is not in the main current of world trade, and whose traffic originates in the grain fields and oil wells of its shores. Only in its lower course, where it serves as the road to the sea for Roumanian wheat, is the Danube commercially other than a means of local distribution of goods and passengers.

Ice forms on the upper river for about two months; on

the lower, 37 days on an average.¹ The harbor of Soulina only freezes in the hardest winters. On the upper river high water is in July, low water in winter, with a second high water in September following rains in the Danube territory. On the middle and lower Danube high water is in the spring, low water in the fall. The fall low water is of great importance to Danube navigation as it corresponds with the period when lower Danube grains would be coming up the river to meet the competition of American grain in western Europe.²

¹ Kende, p. 223, says 48 days.

² Table of water stand in *ibid.*, p. 279.

CHAPTER II

BEFORE THE CREATION OF THE COMMISSION.

THE active Greek commerce in the Black Sea included in its operation the rich territory of the lower Danube basin. Greek ships used the mouth of the river and Greek merchants created thereon an important trade.¹ The Romans, after their conquest of Dacia, made the Danube for part of its course an internal river, and for the rest it was a boundary of the Empire. They maintained forts and a war fleet in the river and commercial navigation was regular and assured.² Remains of Roman works for the towing of boats past the Iron Gates show the effective interest of the State in improving navigation.³ Under the Roman law navigable rivers were open freely to the common use and their banks and ports were public, kept up at public expense. A tax was levied on ships to defray this cost and that of police. River navigation flourished under Roman rule. There were associations of boatmen on the river, which appear to have been regulated in the interest of com-

¹ Baicoianu, *op. cit.*, p. 20; C. V. Suppan, *Die Donau und Ihre Schiffart* (Vienna, 1917), p. 60.

² Engelhardt, E., *Du Regime Conventionnel des Fleuves Internationaux* (Paris, 1879), hereafter cited as "Fleuves," p. 5; *Histoire du Droit Fluvial Conventionnel* (Paris, 1889), cited hereafter as "Histoire," p. 15; Pauly-Wissowa, *Real Encyclopædie der Klassische Altertumswissenschaft* (Stuttgart, 1894), article, *Dacia*.

³ Baicoianu, *op. cit.*, p. 20.

merce, to secure a regular mercantile service, as well as in the interest of transportation of the tributes in nature for the State.¹

The Barbarians from the East followed the river in their inroads on the Empire, and with the decadence of Roman power it became a passageway along which the waves of invasion flowed back and forth. It was down the Danube Valley that Charlemagne came to drive back the Huns and Avars and subjugate the Danube country to the Theiss.² With the end of the Dark Ages in the eleventh century the Danube became less a warpath and more a road for peaceful commerce from the Orient until the Turkish domination closed it.³

The Genoese and Venetians who had succeeded the ancient Greeks in the Black Sea trade, established important stations on the lower Danube. The Crusaders found the Danube a convenient road to the Orient from Germany and navigation rapidly increased under the commercial developments following their expeditions.⁴ The river trade, however, from the 13th to the 16th centuries come into competition with a new sea route established by Venetian and Genoese navigators from Egypt, Asia Minor and Constantinople to northern Italy. Thence the goods came by land to Ulm and Augsburg and Nuremberg, and Regensburg and Vienna declined, though still doing an important business in the Danube Valley.⁵ Sea traffic and river came into competition, sea traffic won and the Danube never be-

¹ Engelhardt, *Histoire*, pp. 2-15; Caratheodory, *Les Grands Cours d'eau* (Leipsic, 1861), pp. 52-75; Demorgny, *op. cit.*, pp. 7-8.

² Demorgny, *op. cit.*, p. 5; Baicoianu, *op. cit.*, p. 21; Suppan, *op. cit.*, p. 69.

³ Suppan, *op. cit.*, p. 69 *et seq.*

⁴ Beer, *Allgemeine Geschichte des Welthandels* (Vienna, 1860) vol. i, p. 233; Baicoianu, *op. cit.*, p. 23.

⁵ Falke, *Geschichte des Deutschen Handels* (Leipsic, 1859), p. 110; Suppan, *op. cit.*, p. 171.

came a main artery of transportation to the Orient after the middle ages. The German dream of its revival through the improvement of the river and deep-water canals connecting the Danube with the Rhine and Elbe was shattered as a result of the War, but in any case it is unlikely that the shorter river route could compete with the longer sea route for the bulky agricultural products of the lower Danube, to northwestern Europe.

During the medieval period there was, however, a considerable navigation on the Danube and it is probable that the depth of water in the river was more constant owing to the forests and swamps which served to regulate the flow.¹

River traffic was not only hampered by the natural disadvantages of the bed, varying depth of water and the rapids and sandbars which often compel the lightering of boats, but was also impeded by human institutions. Many cities on the river had what was called the right of stapel by which vessels were compelled to unload their goods and expose them for sale for three days, a right which was later usually changed to the payment of a toll. In addition there were a great many toll stations for the benefit of individual feudal lords, and churches, at each of which the passing boat was compelled to stop and submit to examination, thus increasing not only the cost, but the time required for a journey.²

The prevailing organization of the Middle Ages, the guilds, extended to the boatmen and drivers of tow-horses on the river. The guilds divided the river among them, so that a particular stretch of the stream could only be navigated by boatmen of a particular town, thus increasing again the difficulties of river transportation for merchants. Freights were fixed by the city authorities in different

¹ Suppan, *op. cit.*, p. 74.

² Suppan, *op. cit.*, pp. 74-5; Falke, *op. cit.*, pp. 72, 112, 237.

stretches of the river acting in concert with the guilds, as an institution which assured a consideration of the rights of both merchants and shippers, since the ruling authorities in the town were the merchants. The duty was laid upon the guilds of keeping up the towpath and keeping the channel free of stones and snags.¹

The independent rulers established on the lower part of the Danube drew profits from the tolls for passage of the river until Turkish dominion practically destroyed the river as a trade route.

The Turks crossed the Dardanelles in 1356, and thence pushed northward to the Danube Valley, conquering Roumania, Bulgaria, and Serbia. In spite of temporary reverses, and especially after the conquest of Constantinople in 1453, the Turkish Sultan advanced along the Danube and reached Belgrade, which was taken in 1521. Continuing up the river through the Hungarian Plain his forces conquered a large part of Hungary, and in 1529 even laid siege to Vienna. Buda became for a century and a half the bulwark of Mohammedanism against Christianity.²

At the beginning of this period Turkey was mistress of both banks of the Danube from the Black Sea to above Budapest. Austria and what was left of Hungary, both under the House of Hapsburg, were her neighbors upon the north, while Russia, yet far removed from the mouth of the river, was chiefly active in pushing south to the Black Sea. Turkish control interrupted commercial development upon the Danube, and the Ottoman domination at Constantinople and on the straits, closing the Black Sea to international commerce, made the Turkish capital the sole market for the Roumanian principalities, and reduced the Danube traffic to trade with Constantinople and the Turkish Empire.³

¹ Suppan, *op. cit.*, p. 53.

² Driault, *La Question de Orient* (Paris, 1908), pp. 25-36.

³ Baicoianu, *op. cit.*, p. 24.

In 1682, taking advantage of a contest for the throne of Hungary, the Turks invaded Austria and laid siege to Vienna. The Pole, Sobieski, came to the rescue of the city. He forced the Turks to raise the siege and to begin the long, slow retreat southward along the Danube, which with temporary interruptions was continued till in 1908 when the complete independence of Bulgaria banished the Crescent from the river. At the peace of Carlowitz, in 1699¹ the Hungarian boundary was pushed to the Theiss. In 1718, at the peace of Passarowitz,² the Hapsburg Emperor crossed the Danube and secured Belgrade and part of western Serbia. The Austrian's river fleet was active in the campaigns of these days and aided materially in the capture of Belgrade in 1717.³ The imperial power never came nearer Constantinople, and as the result of the next war, at the peace of Belgrade, in 1739, Austria was forced to retire from Serbia entirely, giving up Belgrade and recrossing the Danube. Meantime Russia had been steadily pushing south to the Black Sea and westward to the mouth of the Danube. In 1739 she had advanced to the Dnieper and had become the "liberator awaited by all the Balkan peoples."⁴

During this period Austria and Russia had generally made common cause against the Turks. Russia was not yet a near enough neighbor to cause alarm and the common interest of the two powers was conquest at the expense of the Turks. As, however, by successive steps Russia approached the Danube the jealousy of the court of Vienna was aroused, in 1736 especially, because of Russian aggression in Moldavia and Wallachia, (the present Roumania),

¹ Dumont, *Corps Diplomatique*, vol. vii, pt. 2, p. 448.

² *British and Foreign State Papers*, vol. 100, p. 721.

³ Suppan, *op. cit.*, p. 81.

⁴ Demorgny, *op. cit.*, p. 56.

though general European politics, as well as the peculiar situation in the Balkans, prevented a break.

The court of Vienna reversed her policy when victorious Russia advanced into Wallachia and Moldavia in 1769. In 1771 she allied herself to the Turks, to assure the return to the Sultan of the territory occupied, and war between the former allies seemed certain. It was prevented at the expense of Poland; but Russia, affected by her other European interests, made peace in 1774 with Turkey and returned the principalities. The treaty of Kautchouk-Kainardji, July 21, 1774, assured Russia predominance on the lower Danube through the practical protectorate she was granted over the inhabitants of the principalities, as of all Greek Christians in the Empire.

The desire of the Hapsburgs for territory soon overcame their fear of their eastern neighbor, and plans were laid for the partition of the Ottoman dominions. The plan proposed, the famous "Greek Project," interests this study as showing Austria's appreciation of the importance of her outlet to the sea. The first scheme gave the lower Danube territories to Russia, but allotted to the Hapsburg Macedonia and Albania with their ports. In its last phase, in 1781¹ an independent State was to be formed of the lower Danube lands and the Greek Empire to be renewed at Constantinople under a Russian prince, who would, however, renounce his rights to the Russian crown, so that Russia would bar neither the eastern nor the southern outlet to Austrian trade. These ambitious plans were halted by European complications and no important changes on the river resulted from the war which Austria and Russia conducted against Turkey. Austria made peace at Sistova on August 4, 1791,² and Russia followed suit at Jassy on January 9, 1792.³

¹ Demorgny, *op. cit.*, p. 58.

² Nourandounghian, *Recueil des Actes Internationales de l'Empire Ottoman*, vol. ii, p. 6.

³ *Ibid.*, vol. ii, p. 16; *State Papers*, vol. xiii, p. 902.

During the years which followed, up to 1811, Austria was too busy with her revolutionary and Napoleonic wars to seriously oppose Russian aggression up the Danube. The unrest in Serbia, Moldavia, and Wallachia aided the Russian advance. In 1804 Serbia revolted and after seeking aid unsuccessfully in Austria found support from the Czar. Russian troops held Moldavia and Wallachia even after the Czar had agreed to evacuate the principalities at Tilsit in 1807, and 1808 Napoleon and Alexander planned a division of Turkey so that the principalities and Bulgaria should be Russian, while Austria should reach the Adriatic Sea at Saloniki. France, already installed in Illyria and Dalmatia, was to take Bosnia, Albania, and Greece.¹ In 1810-11, at peace with France, Russian troops were active on the Danube and in 1811 even occupied Belgrade, coming to the aid of the Serbians. The menace to Austrian interests was appreciated at Vienna and fear of Russian aggression had its influence in determining her alliance with Napoleon against the Czar by the treaty of May 14, 1812.² Two months later, needing her forces to resist the French invasion, Russia concluded with Turkey the treaty of Bucharest, May 28, 1812.³ She made a territorial gain of great importance in Danube history, for she secured Besarabia to the Pruth, so that she was now riparian, controlling the north bank of the lower river and the northern bank of its delta to the Black Sea. Turkey further agreed that the large islands in the delta opposite the northern arm, should be uninhabited for the distance of a league from the Russian bank, so that Russia had control of the northern or Kilia arm of the river to the sea. Moldavia and Wallachia

¹ Demorgny, *op. cit.*, p. 64.

² Beer, *Orientalische Politik Oesterreichs* (Prague, 1883), p. 253; Wurm, *Vier Briefe*, p. 16; Nourandounghian, *op. cit.*, p. 85.

³ Martens, *Nouveau Recueil General de Traites*, vol. iii, p. 397.

were restored to the Sultan; and Serbia, under Ottoman suzerainty, was assured the administration of its own local affairs.

In 1817, after another insurrection and aided by the diplomatic support of the Czar, Serbian local self-government was secured, under Milosh Obrenovitch, a local leader, as hereditary prince.¹

During this period the principal object of Russia and Austria on the lower Danube was less the control of navigation on the river than the acquisition of territory. Austria, however, at least as early as 1736, saw the danger to her trade of Russian control of the mouths of the river and, with the exception of her period of weakness in 1807, was never in favor of Russian ownership of that region. During the wars over the realization of territorial ambitions the interests of navigation were not entirely neglected. At Passarowitz, in 1718, when Austria was in control of the situation, she agreed with the Turks, by the favorable treaty of commerce of the 27th of July, 1718,² to permit reciprocally to the subjects and merchants of the two Empires freedom of commerce and navigation on the Danube. Austrian vessels were expressly permitted to unload their cargoes from boats brought down the river into Turkish vessels at ports on the lower Danube. Since foreign vessels were not al-

¹ Driault, *op. cit.*, p. 98; Demorgny, *op. cit.*, p. 65; Duggan, *The Eastern Question* (New York, 1902), p. 60; Wurm, *op. cit.*, pp. 16-17. The authorities from which this short account is mainly compiled are Duggan, *op. cit.*; Driault, *La Question de Orient* (Paris, 1917), ch ii, pp. 28-60, 82-102; Beer, *Orientalische Politik Oesterreichs*, a book which containing in its first chapter a short sketch of Austrian policy to Kautchouk-Kainardji, is an extensive study citing many documents, of Austrian policy with Turkey; Demorgny, *Le Danube*, the first part of whose book is an historical, political and economic study of the lower Danube.

² *State Papers*, vol. 100, p. 721; Neumann, *Traites de L'Autriche*, vol. 1, p. 6.

lowed to navigate the Black Sea, merchants were to be permitted to charter at the lower ports vessels for the navigation of the Black Sea at the customary prices, to transship their merchandise without toll and transport it to other ports in the Black Sea. That the river was an important line of communication for oriental goods to the German market is indicated by article 19 of the same treaty, by the terms of which Persian merchants using the Danube from or to the Hapsburg dominion shall pay a transfer toll of 5 per cent for passage, and no more. These provisions were continued in the treaty of Belgrade of the 18th of September, 1739.¹ In fact, Austria does not seem to have gained much profit from the treaty of Passarowitz until the second half of the eighteenth century, when as a result of her industrial progress she attempted commercial expansion on the Danube and penetration of the Orient through the Black Sea. These efforts were not, however, very successful on account of the steady hostility of the Turks.²

On the 21st of June, 1783, Russia and Turkey signed a treaty of commerce and navigation under which all Russian subjects were permitted to navigate freely on the Black Sea and its waters, "including the Danube" and trade in all the Turkish Empire.³

The Turkish Empire was thus opened to Russian ships sailing the Black Sea.

As Austria had in the treaty of Belgrade a most favored nation clause, she promptly secured a like concession for herself.

In 1784, by the Sened of the 24th of February of that year, the subjects of the Emperor were authorized to sail with their own flags, vessels, and sailors from the rivers

¹ Neumann, *op. cit.*, vol. i, p. 9.

² Baicoianu, *op. cit.*, p. 27; Engelhardt, *Histoire*, p. 88.

³ *State Papers*, vol. 100, p. 766.

into the sea and back again out of the sea into the rivers after once paying the customs tariff. The right of transfer from sea vessels into river boats was also expressly granted to subjects of the Emperor.¹

Under this regime, then, the freedom of navigation and of commerce on the river was assured to both riparians, subject to the payment of what practically amounted to a transit tax of the lower river in Turkey, a burden to which foreign merchants were well accustomed on all European rivers of the period.

The Treaty of Bucharest, in 1812, which brought Russia to the river as a riparian, contained a clause giving to her merchant vessels the right of free navigation and trade on the Turkish lower Danube. It also contained the express provision that Russian warships could ascend the Danube as far as the Pruth, to which point the Russians were riparians on the northern, Turkey on the southern bank.

The close of this period found both Russia and Austria as riparians possessed by treaty of the right of free navigation of the river in Turkish territory, with Turkish citizens entitled to navigate its Austrian and Russian waters.

Other States having treaties with Turkey authorizing their merchants to trade in all Turkish ports and to navigate the Black Sea would also have free access to the Turkish ports on the river, and so could trade with the principalities. As a matter of fact, this privilege was of no great importance, since the grain trade from the principalities was wholly with Constantinople, and did not develop as a European interest till much later, when the increasing industrialism of Great Britain sent her merchants to the Black Sea for wheat to make up the shortage in her own agricultural production.²

¹ *State Papers*, vol. 100, p. 728; Martens, *op. cit.*, vol. iii, p. 720.

² Baicoianu, *op. cit.*, p. 44.

On the upper Danube the Hapsburgs had agreed with Bavaria in the treaty of Teschen, May 13, 1779,¹ that the river where it touches certain ceded territory should be common to both parties and that no new tolls should be established. The Danube was not included in the arrangement of the Congress of Vienna in 1814-15, except that the treaty of Teschen was upheld in an agreement between Austria and Bavaria which was not formally ratified.²

The congress, however, laid down certain rules which should govern navigable rivers, rules that were subsequently made the basis of the conventional law of many European rivers, especially those in the Empire of Germany.³ Laying down the principles of freedom of commerce on international rivers, the congress engaged the riparian States on each stream to regulate all that had to do with its navigation in one agreement, which should apply as far as possible to the whole river system. Passage tolls were permitted, and they could be laid on cargoes as well as on vessels, but they were not to exceed the amount of the tolls already in force, and they were to be so fixed as not to require detailed examination of the cargoes. The customs regulations of the various States were to be so drafted as not to interfere with navigation, but all compulsory trans-

¹Neumann, *op. cit.*, vol. i, p. 243.

²Agreement of April 23, 1815; Klüber, *Akten des Wiener Congresses in den Jahren 1814 und 1815* (Erlangen, 1815), vol. viii, p. 135.

³In the enthusiasm of the early years of the French Revolution, at the congress of Rastadt (1798), the French representatives requested that all German rivers, including the Danube, be opened to the French flag. The city of Ulm asked the French deputation to secure the abolition of tolls on the Danube into Turkey and to prevent Austria from prohibiting the passage of goods. The German Deputation was unwilling to accede to the French demands and the French had already withdrawn their general proposition when the congress came to its sudden end. (Engelhardt, *Fleuves*, pp. 25-27; Caratheodory, *op. cit.*, pp. 10-102.)

fers of cargoes, rights of deposit, and monopoly of local boats in certain sections of the rivers were to be abolished, so that navigation at least of the boats of riparian States, should not be interfered with on the river.¹

The congress did not recognize the rights of subjects of nonriparian States to navigate these rivers in their own vessels, and their whole system is based on the theory not of co-ownership but of riparian co-administration for the benefit of the navigation of riparian States and of the commerce of the world. Important steps forward were taken in the abolition of the annoying monopolies which had done so much to hamper trade and to increase the expenses of river transport and in the limitation, regulation, and collection of passage tolls. Before the French Revolution these tolls had been left to the free will of the individual riparian States. The congress of Vienna established the rule that international rivers—that is, rivers crossing or forming the boundary of more than one state—were to be administered for the benefit of the world commerce, but their administration and navigation were to be left in the hands of the riparian States.

Russia's next step in advance came as the result of the disorders in all European Turkey accompanying the Greek insurrection. Massing her troops along the Pruth, she obliged Turkey to sign the convention of Akkerman, October 7, 1826,² by which the liberties of Moldavia and Wallachia, which had been invaded by Turkish troops, were secured under conditions that made Russia practically a protector of the rights of the people of the principalities. This was not enough, however, to prevent her finally going

¹ See articles 108-116 of the act of the congress. Hertslet, *Map of Europe by Treaty* (London, 1815), vol. ii, pp. 269-271.

² Nourandounghian, *op. cit.*, vol. ii, p. 116; Hertslet, *op. cit.*, vol. i, p. 747.

to war, and the treaty of Adrianople of September 14, 1829, which ended the war, was a most important event in the Danube history.¹ Russia got the islands of the delta of the Danube, thus securing control of the mouths of the river except the southern or St. George's mouth, which was to be common to both parties, Turkey still holding the southern bank of that channel. Russia agreed not to build forts or any other establishment on the islands, and Turkey for her part was bound to keep uninhabited her banks of the St. George's Channel for a distance of two hours journey from the river. There was no prohibition of fortifications upon the Bessarabian bank of the Kilia arm, so that Russia was still in position to defend her own territory. The merchant vessels of both powers were free to navigate the Danube in all its course and those flying the Ottoman flag to enter the mouths of Kilia and Soulina, the St. George's mouth remaining common to war and merchant vessels of both contracting parties. The same prohibition contained in the treaty of Bucharest was included, that Russian warships were not to ascend the Danube past the mouth of the Pruth. A very important provision authorized Russia to establish quarantines on the islands. One of the annexes to the treaty was of great importance for the trade on the river. It freed the principalities from the ancient requirement that they should furnish supplies for the consumption of Constantinople, the forces on the Danube, and for the Turkish arsenal, and substituted for it a fixed tribute. As a result the monopoly of the Turkish government and the Constantinople merchants in the grain trade was abolished and the way was paved for the great developments of the next few years.

By this treaty Russia's new position as mistress of the

¹ Nourandounghian, *op. cit.*, vol. ii, p. 166; Hertslet, *op. cit.*, vol. ii, p. 813.

² Hertslet, *op. cit.*, vol. ii, p. 826.

mouths of the Danube, especially of the most used, the Soulina arm, made the question of the Danube at once an international European affair. The situation was similar to that of Holland on the Scheldt. Russia, with practically no back country on the Danube and therefore with no direct interest in the development of navigation on the river, controlled its outlet to the sea, and thereby its commerce. The rapidly increasing grain trade, the principal export business of the lower Danube basin, was in direct competition with Russian grain trade from Odessa, as Antwerp was in competition with Dutch trade, so that the interests of the mistress of the outlet of the river were opposed to its development. From this time England becomes an important factor in the question of the Danube; the interests of her trade were vitally affected by Russian's use of her power in the delta. Some Austrian statesmen were aware of the danger to Austrian trade implied in this agreement but the importance of the treaty was not fully understood at Vienna perhaps because of the preoccupation of the court with other European affairs.¹

England protested against Russia's control of the mouths of the river and particularly against the abolition of the prior right of the Turkish government to the food supplies exported from the principalities. Lord Aberdeen thought that as a result "the supplies indispensable for Constantinople, for the Turkish arsenals, and for the fortresses are entirely cut off."² In fact this step in the freedom of commerce was far more to the advantage of Great Britain than of Russia as it made possible the direct trade with the principalities which soon sent English ships to the Danube harbors seeking grain cargoes for the British Isles. Russia replied that

¹ Beer, *op. cit.*, pp. 383-386; Duggan, *op. cit.*, pp. 71-76; Driault, *op. cit.*, pp. 121-127.

² *State Papers*, vol. xxvi, p. 1298.

the islands, which had been "neutralized" by the treaty of Bucharest and the agreement of 1817 and were not to be inhabited, had become a refuge for evildoers and a breeding place for pestilence. Some organized control must be exercised over them and the right to establish a quarantine station was self-protection for Russian territory.¹ The islands were mostly swamp lands and of little value in themselves so the actual loss in territory to Turkey was slight.

The commercial value of the lower Danube to Austria was emphasized by the development of steam navigation on the river. Attempted unsuccessfully in 1820, a navigation corporation was founded at Vienna in 1829, which soon proved very profitable.² The Hungarian, Count Szecheny, deeply interested in the company, had the Iron Gates explored in 1830 and proved that this barrier was not as formidable as had been supposed.³ The Vienna Government in 1834, blasted away the rocks near Alt Moldawa at the upper end of the Iron Gates, and greatly improved navigation.⁴ On the 11th of November of that year the first ship went through the improved channel to the lower river. The State realized not only the economic but also the political value of a strong merchant fleet and commercial penetration, so the company was in 1831 given a monopoly for 80 years under the condition that it should create two new lines, one establishing communication between the lower Danube and the mouths of the river, touching at Roumanian ports, and the second connecting the traffic of the mouths of the Danube with Stamboul and the ports of Asia Minor.⁵ These sea lines were sold to the Austrian Lloyds in 1845.⁶

¹ Wurm, *op. cit.*, pp. 22-23.

² Baicoianu, *op. cit.*, p. 30.

³ Engelhardt, *op. cit.*, p. 89.

⁴ Kende, *op. cit.*, p. 240; Wurm, *op. cit.*, p. 27.

⁵ Baicoianu, *op. cit.*, p. 31.

⁶ Suppan, *op. cit.*, p. 116.

On the upper Danube a successful Wurttemberg-Bavarian Company was founded in 1835; but Turkish enterprises on the lower river failed.

In 1835 the Austrian company was still further aided by the Government through reorganization which gave it a close connection with the State and increased its force. In 1846 the exclusive privilege of the company on the river in Austria was extended to 1880.¹ The fleet of the company increased rapidly, and in 1853, it included 64 steamers and transported a steadily increasing amount of chiefly manufactured articles to the lower Danube and the Black Sea. In 1839 the company created a service to the Black Sea port of Trebizond for the Persian and Oriental trade (the Suez Canal having not yet been opened) and sent special missions to explore Asia in order to get business for its lines.²

The Journal de St. Petersburg estimated the total increase in shipping at Soulina from 418 vessels in 1830 to 2,629 in 1853.³

British trade with Danube harbors was not important in 1829, for the number of British ships clearing yearly from Danube ports until 1846, was under 20, with the exception of 1844, when it rose to 26. In 1846, however, began a

¹ Suppan, *op. cit.*, p. 116.

² Baicoianu, *op. cit.*, pp. 32-35.

One result of this activity in Asia was to increase the export into Persia by the Danube and the Black Sea to a value of 10,140,800 florins in 1843 and 16,623,804 in 1848 (Wurm, *op. cit.*, p. 38). In 1846 the value of the goods shipped from Austria and the German Zollverein to Danube lands was seven millions, in 1847 more than eleven and a half millions.

The importance of the ports for the Austrian grain trade is graphically shown in the statement that when the Danube was closed by Russia at the beginning of the Crimean War, 6,000,000 guildens (about \$3,000,000) worth of Austrian-owned wheat bound to Austrian harbors on the Adriatic was awaiting shipment in Danube harbors (*ibid.*, p. 40).

³ *Ibid.*, p. 37.

rapid increase both in the number of English ships and in the number of foreign ships sailing to England. In September 1849, 128 English ships and 169 foreign ships were loaded for England, and the wheat shipped had increased from 6,810 tons in 1844 to 85,370 tons in 1849.¹ English goods sent into the principalities had become an important factor in competition with Austrian and were increasing. In 1846, their value was 4,870,000 francs, in 1851 it had risen to 7,565,000.² The foreign ships were chiefly Austrian and Greek. The total navigation in 1849 ran up to 1,175 ships of 246,612 tons of which 297, of 85,113 tons, were in British trade.

Of the great nations of Europe, Austria alone had been in 1829 deeply interested in Danube trade, and in 1853 a free Danube was more important to her than to any other European nation; but British foreign trade, though beginning later, had shown such increase and possibility of development that England was fully awake to the danger of control by Russia of the situation through her ownership of the delta. The Russian Government had, either intentionally or because of lax methods and lack of interest, done practically nothing to further and much to hinder this great increase in Danube shipping.

The Soulina mouth was the only entrance which had been used to any extent. It was nearer Constantinople than the Kilia arm, down which flowed the great volume of water; its bar was less troublesome than either the bar off that arm or off the St. George's.

Under Turkish rule, rows of piles over the bar, aided by simple dredging methods, had kept a depth of water of 16 feet, and dredging had prevented shoaling farther up

¹ See table appended to Report of Vice Consul Cunningham, *Parliamentary Papers*, 1852-3, vol. 102, p. 21.

² Hajnal, *The Danube* (The Hague, 1920), p. 152-3.

the river¹ The Russians did not keep up the Turkish works and made no other effective provision, so that the river rapidly shoaled to a depth in 1853 of 10 feet, and with adverse winds, of not over 8½, greatly increasing the light-erage required and with it the resulting loss from a ship lying in an open road loading from lighters.² A dangerous bar in the Soulina arm near the point where it leaves the river was also left undisturbed. The rapidly increasing number of vessels which sought cargoes in the Roumanian ports meant under these conditions an increasing number of wrecks, both on the bar and up river, which were left undisturbed to jeopardize other ships.

No steps were taken by the authorities to regulate the service of pilotage, so necessary to the increasing merchant fleet in view of the changing channel on the river, or to regulate the charges for the service of the lightermen, who profited by the decreasing depth of water at the bar.

The Russian Government in 1836 established a quarantine, in accord with the power granted to it by the treaty of Adrianople under the terms of which a vessel must go to Odessa to be purified. This regulation caused great consternation, and on the complaint of certain shipowners the British Government asked the law officers of the Crown for advice as to its legality.

¹ Wurm, *op. cit.*, p. 25, *Parliamentary Papers, loc. cit.*, pp. 17-18.

² *Parliamentary Papers, loc. cit.*, p. 49.

³ Wurm, *op. cit.*, p. 27; Urquhart, *The Mystery of the Danube* (London, 1851), p. 42. For ukase establishing quarantine, see p. 43.

The quarantine was continued in force, and Urquhart, a contemporary writer, says that, in fact, it was used as a means of taxing foreign ships. For £100 an English vessel could get a certificate from a Russian consul in England which freed her from quarantine, while vessels not securing certificates were sometimes forced to lie for 40 days off Galatz. (Wurm, *op. cit.*, p. 27.) Urquhart also noted that great feeling was aroused by the report that American ships were not subject to quarantine.

As a result of these various obstructions the freight on a quarter of wheat from Galatz on the Danube to England in 1850 was 13s., while from Odessa it was 8s. 6d.¹ The British consul estimated that inexpensive improvements in the channel would lower the freight by at least 3s., but declared that Russia could not be expected to take measures which would so aid a trade in direct competition with her own port.

The nations chiefly interested, at first Austria and then England, tried by diplomatic means to secure better conditions and encourage trade on the river. Austria, on July 3, 1838, signed a treaty with Great Britain by which Austrian vessels coming from Danube ports should be treated in British harbors as if they came from Austria, and Austria agreed that English ships on the lower Danube should have the same treatment as those of Austria. As the British navigation laws were not amended in accordance with the treaty, no benefits came to Austria from it, and as Turkey, the territorial sovereign on the lower Danube, never acceded Britain gained nothing.²

A more definite step was taken by Austria in signing with Russia the treaty of July 25, 1840.³ Both powers agreed that the navigation of the Danube should be henceforth forever free without toll or interference to the ships of all nations, though by a later article freedom of trade on the Russian part of the river was restricted to the ships of all nations at peace with Russia, and entitled to navigate the Black Sea. Russia undertook to improve navigation in the river as soon as possible. The quarantine was not to interfere with commerce, a lighthouse was to be erected, and

¹ *Parliamentary Papers, loc. cit.*, p. 21.

² Demorgny, *op. cit.*, p. 72; Wurm, *op. cit.*, p. 28; *Treaty in State Papers*, vol. xxvi, p. 677.

³ Hertslet, *op. cit.*, vol. ii, p. 1016 *et seq.*

only a reasonable toll charged for use of the improvement. A toll on Austrian vessels of \$2 for small, and \$3 for large ships was fixed; but as Russia did practically nothing to improve navigation, the treaty was renewed on its expiration only for one year.

Austria and Bavaria, December 2, 1851, by treaty, declared the navigation of the upper Danube free for the ships of all nations, and Austria promised to do her best to secure for Bavarian ships the same privileges on the lower river as Austrian ships enjoyed.¹

Wurtemberg, the other German riparian State on the upper Danube, did not adhere to the treaty till 1855.²

The freedom of navigation on the river was again upheld in a declaration of the Russian-Bavarian Governments of 30th of June, 1853, which contained the provision that Bavarian ships should be on the footing of Austrian ships in Russian Danube waters.³

Great Britain, except for her treaty with Austria, limited herself to protests to Russia, which became very frequent after 1849. The British Government urged upon Russia its duty under the treaty of Vienna, as owner of the mouths of the river, to keep it free and accessible to the commerce of all nations,⁴ and even suggested a meeting of the riparian States to regulate the navigation.⁵ The British vice-consul on the lower Danube reported in 1850 that Russia could not be expected to clear the channel at her expense as the interest of her own port of Odessa was too clearly contrary, so he proposed that the expense be paid by a tax on shipping and that either the Russian Government

¹ Wurm, *op. cit.*, p. 33; *Parliamentary Papers, loc. cit.*, p. 35.

² Martens, *op. cit.*, 2nd ser., vol. xvi, p. 71.

³ Wurm, *op. cit.*, p. 34.

⁴ *Parliamentary Papers*, 1850, p. 14.

⁵ *Ibid.*, p. 17.

let a contract for the work, or that the interested powers name commissioners whose duty it should be to clear the Soulina Canal either themselves or through contractors. He thought the expense small, not over £4,440 annually to keep a depth of 14 feet, while the saving in lighterage alone would be enormous.

Slight efforts were made at various times by the Russian Government to deepen the water on the bar, but neither its treaty agreement with Austria in 1840 nor its repeated assurance to Great Britain that everything possible would be done had any effect in securing useful action. The Minister in St. Petersburg even showed great annoyance in the persistence of British diplomats and treated with impatience all suggestions as to the methods for improvement of the channel.¹ To the complaints in regard to pilots the Russian Government answered that there was a regular staff of pilots at Soulina,² a statement flatly denied by British consuls.³

The Austrian Government as early as 1844 tried to find a way out of the difficulty by a canal from Cernavoda where the river turns north, to Kustenje (or Constanza) on the Black Sea, but the project was not accepted by the Turkish Government, it was suggested because of Russian secret hostility, and when renewed in 1850 it met opposition in the English project of a railroad.⁴ From 1840 to 1843 the

¹ *Parliamentary Papers, loc. cit.*, pp. 38, 41 (Seymour to Palmerston, 1851), p. 51.

² *Ibid.*, p. 2.

³ *Ibid.*, p. 9.

⁴ *Wurm, op. cit.*, p. 42, Beer, *op. cit.*, p. 826. For short discussion of Russian neglect, see Geffcken, *La Question du Danube* (Berlin, 1883), pp. 6-7.

The Governments of Wallachia and Moldavia were disturbed by the Russian neglect of the river and tried to get the mouths of the rivers placed under the control of the great powers, but without result. (Maican, *op. cit.*, pp. 37-38.)

Austrian steam navigation company transferred goods by road from Kustenje to Cernavoda.¹

The development in trade on the lower river during the period had changed a situation which in 1829 was not of European importance into one of great gravity in 1854. Legally Russia had never denied to foreign ships the free use of the waters of the Danube, and had, indeed, in her treaty with Austria agreed to the legal freedom of the stream. By her quarantine regulations, however, by her persistent neglect of the bed of the river, and by her failure to provide proper pilotage or lighterage facilities she had made it evident to the powers interested in better navigation that no improvement could be expected through her efforts, and they were already seeking other means to attain this object.

The navigation of the Danube played an important role in the diplomacy of the Crimean War, though secondary, of course, to the great object of the powers—the preservation of the Ottoman Empire. Russia's occupation of Wallachia and Moldavia in July, 1853, in spite of declaration that it was without any intention of annexation and only as a guaranty,² could not help alarming Austria and Prussia for the future of the growing German trade with the countries of the lower Danube and through the river into the Black Sea.³ France and England, coming to the support

¹ Suppan, *op. cit.*, p. 116

² *State Papers*, vol. 46, pp. 325, 333 (see Proclamation to the inhabitants of Moldavia, *State Papers*, vol. 44, p. 1127).

³ Wurm, *op. cit.*, p. 37, says that the Danube trade from Austria and Zollverein had increased from 31,195 centner in 1835 to 7,165,267 in 1851, or 200 times.

Prussia, though not willing to take an active part in pressing Russia, was, nevertheless, deeply interested in anything which so deeply concerned the welfare of Germany as the mouths of the Danube (see Bloomfield to Clarendon, Feb. 25, 1854, *Parliamentary Papers*, 1854, vol. 71, Correspondence on rights and privileges of Latin and Greek Christians, p. 64).

of Turkey, required the evacuation of the principalities, and on Russia's notifying them that the Emperor did not desire to reply to their ultimatum, declared war in March 27, 1854.¹

Austria and Prussia did not join in the war, but on the 9th of April, 1854, declared that they were united with France and England in the double purpose of the preservation of the integrity of the Turkish Empire and the evacuation of the principalities. On April 20 the two Germanic powers made a defensive alliance against any attack on their respective territories, giving as a reason for their union their common desire to protect German interests, and in an additional article Austria agreed to summon Russia to evacuate the principalities, Prussia agreeing to support her demand, and if Austria found it necessary to use force to compel their evacuation, then Prussia would join in the defense of Austrian territory against an attack. Russian continuation in the principalities was declared to be contrary to German interests.² The German Confederation was to be asked to join this alliance. The Austrian summons was sent to Russia on June 3.³ Austria, who had other reasons than "German interests" for her attitude, took a further step on June 14, 1854, by signing a military convention with the Porte, which was ratified on July 3, 1854.⁴ She agreed to occupy the principalities and to restore them on the conclusion of peace. The Germanic Confederation acceded to the treaty of alliance on July 24, 1854.⁵

¹ *Ibid.*, p. 58; Hertslet, *op. cit.*, vol. ii, p. 1185 for Queen's statement to Parliament.

² Martens, *op. cit.*, vol. xv, p. 572.

³ Duggan, *The Eastern Question*, p. 111.

⁴ Martens, *op. cit.*, vol. xv, p. 594.

⁵ Martens, *op. cit.*, p. 579. Austria and Prussia urged the confederation to join their alliance because German economic development required favorable conditions on the lower Danube and freedom of navigation on the river in the interest of German trade with the Orient (Beer, *op. cit.*, p. 477).

Russia, though insisting that if she evacuated the principalities the British and French fleets should withdraw from the Black Sea and the straits, a condition which Austria could not meet, rather than add to her enemies, withdrew, and the Austrians occupied the principalities under their agreement with Turkey.¹

The Russians had already stopped navigation on the river and had sunk stone ships in the channel, and the allies on their side declared a blockade of the mouths of the river on June 16, 1854.² The blockade was raised on March 10, 1855.³ An active trade immediately sprang up in the transportation of the great stores of grain which the war had immobilized on the lower river. The absence of control, even the weak control of the Russian authorities, who had left the country, caused such an increase in the then active business of the wrecking of ships, stealing of cargo in light-erage, and other disorders that the Austrian commander in the principalities sent a small force of men to Soulina, who established order by vigorous use of the bastinado.⁴

The western powers also began to take an active interest in securing freedom in Danube navigation. Austria, France and England in a note of August 8, 1854, laid down the freedom of navigation of the Danube as one of the four points, which they bound themselves to demand as the basis for peace.⁵ The first of the points was that the protection

¹ Beer, *op. cit.*, p. 489, says that Austria was determined at any price to compel the evacuation of the principalities. The evacuation of the principalities was largely to avoid trouble with Prussia and Germany. Frederick William wrote a note to the Emperor that he no longer considered the treaty of April 10 binding, as its object had been attained (p. 492).

² Wurm, *op. cit.*, p. 40; Demorgny, *op. cit.*, p. 80.

³ *State Papers*, vol. 44, p. 894.

⁴ Engelhardt, *Revue des Deux Mondes*, 1870, 3rd ser., vol. 88; *Les Embouchures du Danube*, p. 109.

⁵ Beer, *op. cit.*, p. 496.

exercised by Russia over Wallachia, Moldavia and Servia be discontinued, and those Provinces be placed under the collective guaranty of the powers.¹ Prussia and the confederation supported and signed an additional article to the treaty of alliance providing that they would come to Austria's help if her troops were attacked in the principalities.²

Relations between Austria and the allies became closer and on the 2d of December, 1854, a treaty was made between Austria, France, and Great Britain to uphold the four points. A commission was formed at Vienna, to which Turkey was asked to send a member, to regulate all questions arising from the exceptional status of the principalities then occupied by Austria; and the four powers agreed that if peace was not reestablished on the basis of the four points in the course of the current year they would take counsel in regard to the proper means of obtaining the object of their alliance.³

The four points were elaborated further in memorandum of the 28th of December, 1854, sent to Russia by Austria, France, and Great Britain. The powers demanded that the course of the lower Danube from the place where it becomes common to two riparian States, should be freed from the

¹ Prussia and the German States considered that German interests were not involved in the other two points, one of which was the revision of the straits treaty of 1841 (Hertslet, *op. cit.*, p. 1024). Even in Austria certain opinion was unfavorable to further action. The position of the principalities gave Austria a guaranty that her interests were safe in that quarter, and a railroad or canal to the sea at Constanza was approved as a solution of the question of the mouths of the Danube which would make unnecessary the dispossession of Russia from the islands (Beer, *op. cit.*, pp. 515, 826).

² Martens, *op. cit.*, vol. xv, p. 598.

³ De Clercq, *Recueil des Traites de la France*, vol. vi, p. 482; Hertslet, *op. cit.*, vol. ii, p. 1221; *State Papers, op. cit.*, vol. 44, p. 22.

territorial jurisdiction created by the treaty of Adrianople. In any case, "the free navigation of the Danube can not be assured if it is not placed under the control of a syndical authority invested with the necessary powers to destroy the obstacles existing in the mouths of the river or which may later form there" ¹

Urged on all sides, Russia sent representatives to the conference of Vienna, March to June, 1855, at which an attempt was made to negotiate a peace on the basis of the four points by representatives of England, France, Austria, Turkey, and Russia. The points were taken up separately and agreement was arrived at on the navigation of the Danube.² The Austrian plenipotentiary expressly limited the discussion to the lower river, from the point where it becomes common to Austria and Turkey—that is, when it becomes the boundary of Servia, into the sea (*jusque dans la mer*), and it was agreed that the principles of the treaty of Vienna should be applied to this stretch of the river. No passage tolls should be permitted and no toll on goods. Customs and quarantine regulations should be as favorable as possible to the liberty of navigation. The chief obstacle to navigation, the bar and shoals up the river, were to be deepened so that deep-sea ships could sail to Galatz, a Roumanian river port, and to defray the cost of the improvements a toll, to be the same for all flags, was to be collected from vessels using the river. Recognizing the European interests in the opening of the Danube, the powers were to assume the direction of and guarantee all the necessary works and have supreme control in order to assure the principle of freedom of the

¹ Martens, *op. cit.*, vol. xv, p. 632; De Clercq, *op. cit.*, p. 487; Hertslet, *op. cit.*, vol. ii, p. 1226; *State Papers, op. cit.*, vol. 34, p. 54.

² Beer, *op. cit.*, p. 531, says that the desire to please Prussia and the small German States influenced Russia in her easy agreement with the first two points.

river. The carrying out of this self-imposed duty was divided into two parts: (1) The planning of the work and the laying down of the general principles of a code of navigation and river police was confided to a commission to be composed of delegates from all the contracting powers; (2) the execution of the works and the administration of the river, including the application of the code, was to be given to a commission of delegates of the riparian States—Austria, Russia, and Turkey. The first commission was to be dissolved only by common consent; the second was to be permanent. Russia consented to abolish the Soulina quarantine and agreed that her forts on the river should not interfere with navigation and that there should be no fortifications on the Soulina or St. George's mouth of the river.

This settlement was not arrived at without discussion. Russia proclaimed her agreement with the principle of freedom of navigation, but at first as local sovereign wanted to keep control of the work of improvement. England insisted on representation of the permanent riparian commission, and in view of her interests in the mouth of the river, desired at least that the European commission, whose duties were limited to the mouths of the river and the bar, should be permanent. The compromise, that it should only be dismissed by common consent, seemed to promise this permanence, but it was given no administrative power; it was only to make rules and to plan engineering works. To the Russian query whether Bavaria and Wurtemberg, riparian on the upper Danube, should not have seats in the riparian commission, Austria flatly answered that she had treaties with those States satisfactorily regulating the upper river and the present conference concerned only the lower river. The full application of the principles of Vienna, which looked to the regulation of the whole river by all

riparians jointly, was not otherwise pressed, there being, in fact, for the States in the conference no substantial interests involved in the upper Danube, and the opening of the river to boats of all riparians would have been contrary to the monopoly granted to the Austrian steamship company.

In the original Austrian draft the islands of the delta, still under Russian rule, were to be neutralized so far as necessary for the operation of the riparian commission, Russia retaining jurisdiction over her own subjects living upon them. The Russian plenipotentiaries objected that neutralization of the islands was unnecessary, and the dispute was finally compromised by prohibiting fortification on the islands and by Russia agreeing to aid the riparian-commission in its work.

The original draft also authorized the powers to have guard boats in the river, but this point was left open to await settlement of the question of limitation of navies in the Black Sea, a point over which the conference was finally broken up.

The whole settlement was favorable to Austria. She kept the upper river out of the discussion; she secured the deepening of the lower river and a seat in the commission of three which was to carry out the work and administer the river. Of the other two seats on the riparian commission, she could count on the friendship of Turkey, in view of the distrust of Russia on the part of that power, and her interest in the development of navigation. She also secured the cooperation of Great Britain as a member of the European commission in the planning of the works, so important to her trade, to deepen immediately the shoals and the bar, without allowing to Great Britain control of any part of the river.¹

¹ For the Conferences, see Martens, *op. cit.*, vol. xv, p. 633; De Clercq, *op. cit.*, p. 506, *passim*. See for the Danube question Special

Protocol No. 4, Martens, *op. cit.*, vol. xv, p. 646; De Clercq, *op. cit.*, p. 515; Special Protocol No. 5, Martens, *op. cit.*, vol. xv, p. 651; De Clercq, *op. cit.*, p. 519, see also *State Papers*, vol. 45, p. 54.

France and England desired to have the delta ceded to Turkey and placed under European control for the purpose of keeping the river free in law and open in fact (see *Accounts and Papers*, 1854-5, vol. 71, correspondence with Austrian Government, especially p. 7, *passim*, p. 41, *passim*.) *Ibid.*, Instructions by Lord John Russell for the Vienna Conference, Feb. 22, 1855 (see Geffcken, *op. cit.*, p. 9). Austria wanted the islands neutralized (see *ibid.*, p. 7), and there was an opinion in Vienna favoring a railroad or canal to Constanza as the solution, leaving the then unimportant Delta and Bessarabian bank of the Kilia arm to Russia (Beer, *p. cit.*, pp. 515, 826).

CHAPTER III

THE EUROPEAN COMMISSION

ON December 16 Austria sent her ultimatum to Russia. The Czar's Government accepted, and on February 1, 1856, the preliminaries of peace were agreed upon at Vienna.¹ Though still based upon the four points, the conditions were more severe on Russia than previously. She was required to withdraw her boundaries from the Danube, ceding the territory lost in Bessarabia to the principalities, under Turkish suzerainty. The freedom of navigation of the river was to be assured by "European institutions in which the contracting powers were to be equally represented," except for the position of the riparians, which was to be regulated in accord with the principles established by the treaty of Vienna.² Light warships were to be maintained by the powers at the mouth of the river to assure the execution of the regulations guaranteeing the freedom of navigation.

The peace congress met at Paris on February 25, 1856. Great Britain, France, Turkey, Russia, and Sardinia were represented, Sardinia having entered the war as an ally of England and France.³ Prussia, as a great power, was in-

¹ Martens, *op. cit.*, vol. xv, pp. 702-703.

² Russia was thus placed in the same position as England in respect to the Danube, being represented on the European and not on the riparian commission and having no territorial interest on the river. Austria had no longer to fear Russia's influence in the delta or on the riparian commission.

³ Hertzslet, *op. cit.*, vol. ii, p. 1228; Martens, *op. cit.*, vol. xv, p. 700 *passim*.

vited to participate¹ after the general basis of the treaty had been accepted,² and her plenipotentiaries took their seats on March 18.³

The treaty of Paris finally adopted by the congress lays down the fundamental law of the Danube in Articles XV to XIX, inclusive:

Art. XV. The act of the congress of Vienna having established the principles intended to regulate the navigation of rivers which separate or traverse different states, the contracting powers stipulate among themselves that those principles shall in future be equally applied to the Danube and its mouths. They declare that its arrangement henceforth forms a part of the public law of Europe and take it under their guarantee.

The navigation of the Danube can not be subjected to any impediment or charge not expressly provided for by the stipulations contained in the following articles. In consequence there shall not be levied any toll founded solely upon the fact of the navigation of the river, nor any duty upon the goods which may be on board of vessels. The regulations of police and quarantine to be established for the safety of the States separated or traversed by that river shall be so framed as to facilitate as much as possible the passage of vessels. With the exception of such regulations, no obstacle whatever shall be opposed to free navigation.

Art. XVI. With a view to carry out the arrangements of the preceding article, a commission, in which Great Britain, Austria, France, Prussia, Russia, Sardinia, and Turkey shall each be represented by one delegate, shall be charged to designate and to cause to be executed the works necessary

¹ Martens, *op. cit.*, vol. xv, p. 720.

² *Ibid.*, pp. 706-707.

³ Russia and Austria asked at the outset that Prussia be invited to join in the congress, but England made the limitation indicated in the text, France supporting her (*ibid.*, p. 707). France finally proposed the invitation to Prussia, which was unanimously approved (*ibid.*, p. 720).

below Isaktcha, to clear the mouths of the Danube, as well as the neighboring parts of the sea, from the sands and other impediments which obstruct them in order to put that part of the river and the said parts of the sea in the best possible state for navigation.

In order to cover the expenses of such works, as well as of the establishments intended to secure and to facilitate the navigation as the mouths of the Danube, fixed duties of a suitable rate, settled by the commission by a majority of votes, may be levied, on the express condition that in this respect, as in every other, the flags of all nations shall be treated on the footing of perfect equality.

Art. XVII. A commission shall be established, and shall be composed of delegates of Austria, Bavaria, the Sublime Porte, and Wurtemberg (one for each of those powers), to whom shall be added commissioners from the three Danube principalities, whose nomination shall have been approved by the Porte. This commission, which shall be permanent: (1) Shall prepare regulations of navigation and river police; (2) shall remove the impediments, of whatever nature they may be, which still prevent the application to the Danube of the arrangements of the Treaty of Vienna; (3) shall order and cause to be executed the necessary works throughout the whole course of the river; and (4) shall, after the dissolution of the European commission, see to maintaining the mouths of the Danube and the neighboring parts of the sea in a navigable state.

Art. XVIII. It is understood that the European commission shall have completed its task and that the river commission shall have finished the works described in the preceding article, under Nos. 1 and 2, within the period of two years. The signing powers assembled in conference, having been informed of that fact, shall, after having placed it on record, pronounce the dissolution of the European commission, and from that time the permanent river commission shall enjoy the same powers as those with which the European commission shall have until then been invested.

Art. XIX. In order to insure the execution of the regulations which shall have been established by common agreement, in conformity with the principles above declared, each of the contracting powers shall have the right to station, at all times, two light vessels at the mouths of the Danube.¹

The Turkish plenipotentiaries declared that the Porte would willingly make the necessary advances for the execution of the works planned by the European commission.²

The principal difficulty in drafting these articles arose from the objection of Austria to include the upper Danube in the treaty.³ She finally yielded, however, in the face of the strong stand taken by France and England and agreed to include Bavaria and Wurtemberg in the riparian commission.⁴

It was expressly stated in Article XXX of the treaty that Russia consented to the "rectification" of her frontier in Bessarabia "in order to better assure" the liberty of navigation on the Danube. The ceded territory was to be annexed to Moldavia under the suzerainty of the Sublime Porte,⁵ and Austria agreed to withdraw her troops at once from the principalities.⁶

¹ Treaty of Paris, 30th of March, 1856, Hertslet, *op. cit.*, vol. ii, p. 1257.

² Martens, *op. cit.*, vol. xv, p. 742.

³ *Ibid.*, pp. 713, 722.

⁴ *Ibid.*, p. 727.

As at Vienna, in 1855, Austria urged that conditions on the upper river were satisfactory and needed no regulation (*ibid.*, p. 713); that she intended to introduce complete liberty of trade in all her dominions, including free navigation of the Danube; that she was bound by previous enactments and acquired rights on the river (*ibid.*, p. 722). This reference was to the monopoly of the Austrian Steam Navigation Co. (Demorgny, *op. cit.*, p. 198), and her plenipotentiary in finally adhering to the principle of freedom of navigation on the whole river added that his consent was combined with respect for prior engagements of the riparian powers (*ibid.*, p. 727).

⁵ Martens, *ibid.*, pp. 777, 778.

⁶ *Ibid.*, p. 751.

The treaty of Paris recognizes the principle of the treaty of Vienna, especially as laid down in the Rhine convention, that the administration of an international river, so far as joint administration is necessary, should be left in the hands of the riparian states. The peculiar conditions, however, at the mouths of the river and the need for prompt action in deepening the channel induced the introduction of a modification to this principle and also to the principle that the carrying out of improvements as a rule is left to the local sovereign. Great Britain, furthermore, had succeeded at Vienna, at a time when Russia was local sovereign, in having recognized her interest in assuring the improvement in the mouths of the river, based on her large share in its maritime navigation. She never gave up the position thus acquired.

Turkey also, as the prospective local sovereign, was not in a position to object to any disposition approved by the powers, nor was her administration such that any dependence could be placed upon her ability to carry out engineering works. The European commission, however, began as a body with strictly limited powers, and its life was not intended to be a long one, though in the requirement of an agreement of the powers for its dissolution lay the germ of its perpetuation.

Wallachia and Moldavia were not united. France proposed the creation of a single State, but Turkey, supported by Austria, objected on the ground that the two principalities preferred autonomy.¹

Difficulties having arisen over the new frontier of Bessarabia, a conference met at Paris on January 6, 1857. At the request of Turkey,² the islands of the delta and the

¹ Martens, *ibid*, p. 717.

² Hertslet, *op. cit.*, vol. ii, p. 1297.

Isle of Serpents were placed under her direct sovereignty instead of being annexed by Moldavia.¹

The decision of the conference was consecrated by the treaty of June 19, 1857.²

Austria promptly set to work to use the instrument of the riparian commission to establish her ascendancy on the river and to nullify as far as possible the provision for freedom of navigation for all flags.³ Representatives of the riparian States met at Vienna and, on the 7th of November, 1857, signed a treaty regulating the whole river from the point where it becomes navigable into the Black Sea. The Danube principalities did not sign the treaty, but Turkey signed.⁴ Seagoing ships were permitted to pass up to any river port and, at any intermediate port, to discharge or take on passengers or cargo from or bound out to sea. Other river navigation was reserved to the vessels of the riparian States.

The right to establish quarantine systems, which would include, of course, maritime navigation, was reserved. Pilotage organized by the riparian States was made obligatory. Rules of navigation and river police were to be drawn up by the riparian commission with the approval of the riparian Governments⁵

¹ Martens, *ibid.*, p. 793; Hertslet, *op. cit.*, p. 1298.

² Hertslet, *op. cit.*, vol. ii, p. 1320.

³ Austria was the sole great power in the commission whose navigation interests were developed, while Turkey, Serbia and the principalities were not likely to create large merchant fleets, and Russia was no longer a riparian.

⁴ Hajnal, *The Danube*, The Hague, 1920, p. 82.

⁵ Martens, *op. cit.*, 16:2, p. 75.

All monopolies of navigation were abolished and prohibited for the future, as were all the onerous special local rights of deposit, of breaking cargo, of transfer to local vessels at certain ports. Navigation tolls on vessels were prohibited and "tolls on goods on board ship," except, as is usual in river treaties, charges for the use of port installations or

The treaty was submitted to a conference of the signatory powers of the treaty of Paris,¹ where it was sharply criticized by the British plenipotentiary, in that it reserved river navigation to riparians, in its quarantine provisions and as the power to make regulations made possible grave interference with navigation.² The Austrian plenipotentiary answered that the treaty of Paris, based on that of Vienna, did not assure liberty of navigation to nonriparians, except at the mouth of the river, and maintained that the sections in regard to quarantine and modification of regulations were reasonable.³ As the other powers joined in the British protest Austria and Turkey agreed to submit the objections to their Governments,⁴ but maintained that the navigation treaty could be put into force at any time. The Turkish plenipotentiary, however, stated that his Government would withhold its application to its part of the river till agreed to by all the signatory powers. The other powers held that the regulation of navigation on the Danube could not be put into effect without their approval.⁵ The riparian

for services rendered, such as pilotage. In this last case the tolls were not to be more than enough to cover cost and maintenance and must be agreed upon by common consent.

¹ Conference was held at Paris to settle the affairs of the principalities of Wallachia and Moldavia, 22nd May to 19th August, 1858.

² Martens, *op cit*, 16 2, p. 42. The quarantine provision allowed the detention of vessels "on suspicion" of pestilence in Turkey or a riparian country.

³ *Ibid*, p. 45. The Austrian plenipotentiary remarked that the reservation of the right of river navigation did not necessarily imply that the riparian States would practically shut out all non-riparian flags (*Ibid*, p. 47.)

⁴ *Ibid.*, p. 48.

⁵ *Ibid*, p. 49. A new treaty, meeting the objections to a limited extent, was signed at Vienna, Mar. 1, 1859, but the exclusion of non-riparian vessels was maintained. For the treaty, see Sturdza, *Recueil des documents relatifs à la liberté de navigation du Danube*, p. 78.

commission, intended to be permanent, never functioned as an administrative commission

The European commission met on November 4, 1856, at Galatz.¹ There were no satisfactory surveys of the river and practically no accurate knowledge in regard to the delta, so that the commission was obliged at first to make surveys and was unable to come to a decision as to which of the mouths should be permanently improved.²

While trying to secure unanimity, the commission, to meet the insistent demands of traders for improvements, began temporary jetties at Soulina.³

This work, completed in 1861, was successful, and the commission has done nothing to improve the other mouths, but has concentrated its work upon the Soulina mouth and arm. The results of its engineering works have been very satisfactory, the depth off Soulina in 1857 was from 8 to 11 feet, usually 9 feet, while in 1861 there was a depth of 17½ feet, in 1871, 19 feet.⁴ Since 1905, the depth over the bar has been 24 feet.⁵ Nearly the whole of the Soulina

¹ "Les Embouchures du Danube," by Engelhardt, *Revue des Deux Mondes*, loc. cit., p. 100

² *Ibid.*, p. 107. Attempts made to deepen the river by simple operations of dredging and by use of the Turkish rake were unsuccessful. *Ibid.*, p. 107 (see "Notice sur les travaux d'amélioration du Danube," by Voisin Bey, *Annales des Ponts et Chaussées*, 1893, vol. i, p. 24).

³ Engelhardt, *op. cit.*, p. 107. France, Prussia, Italy, and Great Britain, at the instance of Great Britain, referred the question of permanent improvement to a committee of engineers sitting at Paris. The committee decided on a lock canal opening into the Black Sea from the St Georges Branch, but the temporary work had already been started and their plan was allowed to drop (*Rapport de la Commission Technique Internationale pour l'examen des Questions relatives à l'Amélioration des bouches du Danube*, Paris, 1858).

⁴ *Report on Improvements in the Danube, Accounts and Papers*, 1872, vol. lxx, pp. 2-3

⁵ See *Report on the Operations of the European Commission of the Danube*, 1907, vol. lxxxvii, p. 6.

arm is now artificial, and as a result of the cuttings and embankments its length has been reduced from 45 to 33 nautical miles and its depth increased from 8 to 18 feet.¹ The cost of the engineering works between 1857 and 1905 was about £1,600,000.² In addition to this principal accomplishment, the commission has practically constructed the port of Soulina, which has grown from a miserable village of about 1,000 inhabitants in 1853³ to a well-built city of five to six thousand.⁴

The era of important works at the mouth of the river is far from being closed. The commission has developed plans for farreaching improvements, and as larger steamers come into the river new works will be necessary, so that even as an engineering body the European commission is still of great use.⁵

The finances of the commission were at the beginning, a difficult problem. Turkey had agreed to advance the necessary money and material, but her supplies, never regular, stopped in 1860. The commission then established a toll and, with the approval of the Governments,⁶ raised a loan which

¹ *Ibid.*, p. 6.

² *Ibid.*, p. 7.

³ Engelhardt, *op. cit.*, p. 98.

⁴ Demorgny, *op. cit.*, p. 206. In addition to its works in the river channel and the bar, the activities of the commission include construction and maintenance of the lighthouses at St. George and Soulina, quays, piers, and wharves in the port, and workshops needed for its own purposes in the town of Soulina, office buildings, houses for employees, marine and epidemic hospitals at Soulina, telegraphic lines from Tulcha to Soulina, necessary buildings for the inspection of navigation at Tulcha, and office buildings at Galatz. (Sturdza, *op. cit.*, pp. 882-3.)

"It may be said that there is not a public institution in the city of Soulina and in the port, including the telegraphic and telephonic service, which has not been erected and paid for by the commission." (Demorgny, *op. cit.*, p. 206.)

⁵ Demorgny, *op. cit.*, p. 214.

⁶ Martens, *op. cit.*, vol. xviii, p. 183.

was followed by another loan in 1862.¹ In 1868 the commission found itself unable to negotiate a new loan for £135,000, because it could not offer satisfactory security, so the powers were forced to guarantee the debt, and the money was raised in London.² Russia alone did not join in the guarantee.³ The loans and the Turkish advances were paid off by 1887 from the revenue of the commission arising from tolls, though tolls were steadily decreased.⁴

The difficulties which confronted the commission in its attempt to improve navigation conditions at the mouths of the Danube were not alone physical. When the commission met at Galatz, Russia had not yet abandoned the delta, though Soulina had been evacuated during the war and was then occupied by Austrian troops. Turkey did not dare intervene in the presence of this double occupation, so that there was in 1857 no regular administrative control and disorder was rife.⁵

¹ Baicoianu, *op cit.*, p. 106; *Report on the Danube Commission, 1872, Accounts and Papers*, vol. lxx, pp. 2-3

² See for the treaty of guaranty, Hertslet, *op. cit.*, vol. iii, p. 183.

⁴ *Report on the Danube Commission, 1907, Accounts and Papers*, vol. lxxxvii, p. 7. See for agreement as to Turkish advances, annexed to the public act of 1865, *State Papers*, vol. 55, p. 91.

⁵ Demorgny, *op. cit.*, p. 224, Engelhardt, *op cit.*, pp. 109-110. "The pilots were few, and in league with the rogues of every class, who in one way or another plundered the vessels trading to the Danube. They ran vessels aground in order to oblige the latter to employ lighters, in whose profits they shared, and whilst acting as interpreters and agents for the captains in making terms with the lightermen arranged most exorbitant rates, which the captains, in their distress, were obliged to consent to. Moreover, in addition to the extortion thus practiced, the lightermen robbed the vessels they lightered of their grain, by use of false bottoms to their holds, by sending away during the night the grain they received during the day, and by other devices which now happily belong to the past.

"Over and above these evils, the navigation suffered from the entire absence of any order or rules for navigation, and thus collisions and

The riparian commission which was expected to assure order on the river never came into being, so the European commission was faced with the necessity of doing something to secure sufficient order for the prosecution of its own work and with the prime need for regulation in the interest of commerce. With the approval of the Governments represented, it assumed the duty of drafting rules of navigation and supervising the police of the river, and an arrangement with Turkey placed the local authorities to a certain extent under its control.¹ These temporary arrangements were formally approved and consolidated by the public act of November 2, 1865, a codification of the rules of navigation and police on the river. The European commission, by the force of circumstances, had become an administrative and judicial as well as an engineering and planning commission, with more extensive powers than have been enjoyed by any other river-regulating commission.

The public act placed the works and establishments of the commission "under the guaranty of international law" and neutralized them, together with the employees of the commission. Quarantine was strictly limited and sanitary measures were committed to the supreme board of health at Constantinople, on which the powers were represented. The navigation regulations of the commission were to be binding not only in police matters but also before the civil courts in cases to which they were applicable. The inspector general of the lower Danube and the captain of the port of Soulina, the administrative officer on the river, though ap-

accidents of all kinds were frequent; and in the utterly lawless state of things which prevailed in 1856 acts of piracy and intentional loss of vessels were not rare occurrences" *Accounts and Papers*, vol. lxx, 1872, pp. 1-2. See Hajnal, *op cit*, p. 158

¹ Engelhardt, *op. cit.*, pp. 109-110; Report of 1872, *Accounts and Papers*, vol. lxx, pp. 1-2.

pointed by the Porte, must conform to the regulations, and the authority of the European commission over these officials was established by the provision that it might request the dismissal of either on proving that he had committed an offense. The Porte had not alone the power of dismissal, and in any case the officers could only be removed in consequence of an agreement between the Porte and the commission. Both officers were to act under the superintendence of the commission, but were paid by the Ottoman Government. The international character of these officials was expressly declared in the protocol to the act.¹

The naval guard of the powers must enforce obedience to the regulations and the orders of the river officials on the part of vessels flying their flags. If no guard boat qualified to interfere was at hand the war vessels of Turkey, the local sovereign, were to be called upon.

The pilot and lighterage services were regulated and a tariff of navigation dues was appended which carried out the theory of the treaty of Paris that the toll should be a payment for service by modifying the amount per ton according to the depth of water at the bar.

The inspector of navigation and the captain of the port, judge in the first instance, all cases of offenses against the regulations and fix fines. Appeals must be made within three months, either before the European commission or the mixed tribunal which may be instituted at Soulina. The act does not treat the European commission as a permanent body, since the possibility of a mixed tribunal to assume its judicial duties is provided for and the riparian commission is also mentioned as its probable successor.²

The public act was approved by the conference of the sig-

¹ *State Papers*, vol. 55, p. 89.

² For the public act and regulations, see *State Papers*, vol. 55, pp. 67, *passim*; Martens, *op. cit.*, vol. xviii, p. 144.

natory powers to the treaty of Paris¹ (March 10-June 4, 1866).

At the same conference Great Britain succeeded in securing the extension of the life of the European commission for five years, and the riparian commission, at the instance of Russia, was requested to submit as soon as possible a new code of rules for the whole river in place of the riparian treaty of 1857. The doubt raised by the wording of the treaty of Paris as to whether the European commission was to carry out directly the work of improvement was formally solved in law as it already had been solved in fact in favor of the commission with the approval even of the local riparian power, Turkey.

Great Britain, the chief supporter of the European commission, tried to have its jurisdiction extended to Braila, the highest Roumanian port on the river to which sea-going ships resort,² but, though the other powers approved, Turkey, the riparian power, refused to consent.³

The British plenipotentiaries pointed out that experience

¹For protocols see *ibid.*, p. 167, *passim*. The signatory powers of the treaty of Paris were Prussia, Austria, France, Great Britain, Sardinia, Russia, and Turkey. Germany succeeded to Prussia, Italy and Sardinia. *Ibid.*, p. 185.

²*Ibid.*, p. 185.

³*Ibid.*, vol. xviii, pp. 205-206, 221.

Turkey's ground for refusal was that she saw no need for the extension, and that to consent would be to prejudice the rights of the other riparian powers under the treaty of Paris.

The position of Great Britain on the extension of the territorial jurisdiction of the commission was logical in view of the change in the character of the commission effected by the act of 1865. The European commission of 1857 was established to plan the improvement of the bar and of the channel of the river in the delta. Above Isaktcha the channel was not then thought to need improvement as far as maritime commerce extended. In 1866 the commission was actively engaged on engineering work with its own material and men and was recognized as a legislative body with control over maritime navigation.

had shown the need of a little dredging on the river up to Braila, which could be economically done by the commission, and that since the commission has a legislative and judicial power over navigation, its rules should be applied on the whole stretch of the river normally frequented by seagoing ships.¹

There was after the Peace of Paris much skepticism over the possibilities of the European Commission and the opening of the river. The project of access to the sea by way of Constanza was revived, and an English company secured a concession from the Turkish government for a railway from Cernavoda, 64 km. Turkey guaranteed interest on the amount spent on the line, which was pushed to completion in 1860. The port works at Constanza, however, which the company had also agreed to construct, were not sufficiently advanced to make the harbor safe for ships, and the success of the initial dredging and dykes of the Commission at Soulina made impossible competition by a route requiring double handling of bulky cargo, from river boat to rail, from rail to ship, with the direct transfer from river craft to seagoing vessel at Galatz and Soulina.²

A year after the opening of the Constanza line, Sept, 1861, it was determined by Turkey to open a line from Rustchuck on the Danube to Varna, a Black Sea port, which would greatly shorten the trip from Vienna to Constantinople and would lead to a much better harbor. The road was begun in 1864 by an English firm and completed in 1867.³ As it did not pay, the Sultan's government was compelled to make an annual contribution to the operating

¹ *Ibid.*, pp. 182-183.

² *Das Eisenbahnwesen auf der Balkan-Halbinsel*, by Dr. Radostare M. Drintschiff, 1894, p. 6.

³ *Ibid.*, pp. 9-16.

company. Finally the Bulgarian government as successors to the Turkish was compelled to buy the railroad from its English owners.¹

Events were to bring the question of the Danube into the council of Europe before the expiration of the five-year extension of the life of the commission. On October 31, 1870, the Russian chancellor sent a note to the powers denouncing the sections of the treaty of Paris of 1856 neutralizing the Black Sea and the appended convention between Russia and Turkey limiting their navies on its waters.² Russia had long contemplated this step, only awaiting its opportunity, and in the defeat of France in her war with Germany appeared the hoped-for moment.³ Other provisions of the treaty were to remain in force, so that the condition on the Danube was not directly affected. The neutralization of the Black Sea, however, protected that of the Danube, emptying into it, and the limitation of warships, especially Russian, formed a guaranty for this neutrality. Great Britain protested energetically against the Russian circular and denied Russia's right alone to denounce a treaty entered into solemnly by a number of powers. Austria also objected and added that if the neutrality of the Black Sea be abolished a new guarantee for the free navigation of the Danube must be furnished.⁴

A threatening situation was averted by the action of Bismarck in securing a conference to revise the treaty of Paris. The conference met in London on January 14, and continued in session until March 14, 1871. By the treaty of March

¹ *Varna Railway, State Papers*, 1884, vol. 75, p. 1048.

² Hertslet, *op. cit.*, vol. iii, p. 1892.

³ Beer, *op. cit.*, p. 598, *passim*. See also *The Question of the Dardanelles*, Phillipson and Buxton (London, 1917), p. 101, *passim*.

⁴ Demorgny, *op. cit.*, p. 230.

13, 1871,¹ which crowned its work, the neutrality of the Black Sea was abolished; and as a further protection for the Danube the principle of neutrality of the works, establishments, and personnel of the Danube commission was expressly declared.²

Since the other provisions of the treaty of Paris were not affected, liberty of navigation on the Danube remained as fixed by that treaty. It was expressly provided in 1871 that the neutralization of the works and staff of the commission did not "affect the right of the Sublime Porte to send as heretofore its vessels of war into the Danube in its character of territorial power." The life of the commission was extended for 12 years, till April 24, 1883, as the period necessary to pay the debt guaranteed by the powers.³ Great Britain again tried to extend the territorial limit of the commission to Braila, but did not insist against the objection of Turkey.

A new element was introduced into the Danube problem at this conference. At the request of Austria-Hungary, riparian powers at the Cataracts and Iron Gates, the series of rapids between the Hungarian and the lower Danube plains, were authorized to levy a temporary toll on merchant vessels profiting by the improvement which they proposed to make in the bed of the river at that point. The toll should

¹ Hertslet, *op. cit.*, vol. iii, p. 1919.

² Demorgny, *op. cit.*, p. 230. Austria especially desired this declaration

³ Martens, *op. cit.*, vol. xviii, p. 299.

The envoy of Great Britain tried to get a 26-year extension as the period necessary to complete the works planned by the commission. He would prefer an indefinite life, but Turkey refused a longer term than the 12 years originally proposed by Austria-Hungary (*ibid.*, p. 299).

The Austro-Hungarian plenipotentiary explained that while his Government did not desire the extension to Braila, she would not have opposed the wish of the conference. The conditions of a new meeting of the riparian commission were to be fixed by an agreement among the riparian powers.

only continue until its product had paid for the cost of the works¹

The neutralization of the Danube commission and the guaranty of free navigation on the river were severely tested in the war which broke out between Russia and Turkey on the 25th of April, 1877.² A treaty between Russia and Roumania on the 16th of April, 1877, had assured to the Russian troops passage through Roumanian territory,³ and on the 14th of May, 1877, Roumania announced that a state of war existed between herself and Turkey.⁴ Military operations in Europe were necessarily conducted on the line of the Danube, the boundary between Roumania and the Turkish province of Bulgaria. The Turkish fleet controlled the Black Sea, the Russian naval program not having had time since 1871 to be developed, and a fleet of 18 Turkish monitors and gunboats held the Danube, supporting the Turkish Army and fortresses on the south bank.⁵ The Russian and Roumanian forces were upon the north bank, and Russian gunboats quickly made their appearance on the river, so that both on the water and on the land the Danube line was the scene of active operations. In addition to the unavoidable danger to peaceful navigation arising from the cannon of land fortifications and monitors, both belligerents laid torpedoes in the river to impede the operations of the opposing party.¹

¹ Austro-Hungary's first proposal was that she should do the work. The powers represented in the conference were Germany, Austria, France, Great Britain, Italy, Russia, Turkey. For protocols, see *ibid.*, pp 273-302.

² Hertslet, *op. cit.*, vol IV, p. 2598

³ *Ibid.*, p. 2579

⁴ *Ibid.*, p. 2618.

⁵ *The Times* (London) in May and June, 1877.

⁶ *Ibid.*, in the spring of 1877, and *United States Foreign Relations*, 1877, p. 476.

Austria protested Turkish mines, on the ground that they were being laid without system, and would, therefore, be difficult to recover. Turkey promised to take notice of this objection. "Interpellations in Hungarian Parliament," *The Times*, Sept. 28, 1877)

The course of the war proved the great difficulty of trying to enforce neutrality of an international river. If the Danube had been neutralized effectively, so that it could not be used for military purposes, Russia could not have moved her troops across the river. If, however, the Russians were to be permitted to transfer troops across the river the Turks could not be reasonably prohibited from using gunboats and monitors to prevent the crossing, but as soon as the Turkish fleet came into action the use of torpedoes by the Russians against that fleet was inevitable.

Recognizing the character of the Danube as "a line of defense," the Turkish Government on April 29¹ authorized their commander to take the necessary military measures on the river, especially to prohibit all navigation and commerce, to requisition vessels or to hold them in port.² The commander promptly made use of his power. On April 30³ he prohibited all navigation and trade on the river on the penalty of confiscation. Russia was equally severe. Her commander stopped all navigation on the Danube by order of April 27,⁴ but allowed a reasonable time for vessels in river ports to leave the river. This leeway was cut short by a second order on April 30,⁵ abruptly stopping all navigation. Neutral vessels which remained in river ports were, however, not to be molested.⁶ Roumania, in her turn, closed the river from May 22.⁷

As a consequence navigation on the lower Danube stopped. Neutral vessels were forced to go upriver or to take

¹ *State Papers*, vol. 68, p. 918.

² The Government recognized no obligation to pay for losses caused by delay resulting from the war.

³ *State Papers*, p. 920.

⁴ *Ibid.*, p. 917.

⁵ *Ibid.*, p. 920.

⁶ *Ibid.*, p. 922.

⁷ *The Times*, May 22, 1877.

refuge in the river ports.¹ Austria-Hungary protested, early in May,² to both Russia and Turkey. She did not contest their right to temporarily stop neutral navigation on the ground of military necessity, but requested assurance that there should be no permanent suspension of free navigation which was guaranteed by treaties. Russia, on May 13, in her decree relating to blockades³ required her commander on the Danube to allow all possible freedom of commerce and to restrict it only by necessary temporary measures. The works and personnel of the European commission should be protected when covered by the special flag of the commission. In the middle of May, Turkey gave the required assurance to Austria.⁴

Difficulty arose over the flag of the commission. Turkey required the use of the Turkish flag and protested against the use of the British flag to indicate the buildings of the commission.⁵ As the commission had no recognized flag of its own, there seemed nothing else to do.

The river was crossed by the Russians on June 28, but the Turks still held the fortresses on its shores and kept monitors in the river until the armistice was signed. They also held Soulina and their navy controlled the Black Sea. The neutralization of the works of the commission, which made the Soulina mouth navigable, was a legal obstacle to

¹ The Austrian Steam Navigation Co. had limited its service to Turnu-Severin, the highest Roumann port, late in April (see *The Times*, Apr. 28, 1877). The English towing company on the Danube, as early as May 2, was advised by the English consul to keep its boats in harbor, owing in part to the danger from torpedoes (*ibid*, May 2).

² *Ibid.*, May 9.

³ *State Papers*, vol. 68, p. 924.

⁴ *The Times*, May 16.

⁵ See for the position of Russia and Turkey, *The Times*, May 15 and May 16 (Vienna correspondence).

the destruction of those works by Russian torpedoes and therefore gave an advantage to the Turks who were protected in that this prevented the blocking of the Soulina mouth. The river, however, was not neutralized and the Russians in July, 1877, sunk stone-laden ships in the Soulina arm to prevent the passage up the river of Turkish gunboats.¹ The members of the commission protested against this action of the Russians.

The Turkish admiral notified the resident engineer of the European commission that he insisted on the right to lay torpedoes, sink ships, and otherwise act to impede the movement of the enemy warships on the Danube; but, aware of the possible detriment to works of the commission, he would only do so to the extent required by absolute necessity. The resident engineer answered that his letter would be referred to the commission at its office in Galatz and said that the commission was trying to have the Russian dam removed. Shoaling had already taken place as a result of that dam and another would seriously complicate conditions. The Turks did not carry out their threat,² but the Russians attacked and bombarded Soulina on October 7 and 10. They were forced to withdraw after sinking a Turkish gunboat in the river and no damage was done to the works of the commission.³ The only guard ship at the mouth of the river, H. M. S. Cockatrice, was warned of the Russian attempt and went to sea, where she remained during the bombardment.

By the armistice of January 31 it was settled that the Turks were to leave Soulina and that Russian military

¹ *Accounts and Papers*, 1878, vol. lxxvi, *Commercial Reports, Reports on Improvements in the Navigation of the Danube*, p. 2. See also *The Times*, Aug. 2. Russian circular to the powers

² *The Times*, Oct. 6, 1877.

³ *The Times*, Oct. 25, 1877; *Accounts and Papers*, *op. cit.*, p. 3

authorities would at once remove all impediment to navigation in the river.¹ Not until March 25, 1878, was the navigation of the Danube officially free, and even then the notice of the captain of the port of Galatz, a Roumanian official, warned shipowners that "as torpedoes have not been removed from certain localities, navigation will be at their own risk and peril."²

The European commission was not effective in keeping the river open to navigation during the period of the war, though it continued to maintain its organization and held its regular session in November, 1877, at Galatz.³

In the fall and winter of 1877-78 the position of the Turks seemed hopeless. As the longed-for support from the great powers did not materialize, the Turks were forced to treat with Russia alone on January 31, 1878, and finally agree to the preliminary treaty of San Stefano on the 3d of March, 1878.

Turkey ceded to Russia the Dobrudja and the Isle of Serpents, including the delta of the Danube, Russia reserving the right to exchange this territory for Bessarabia,⁴ with as a southern boundary the thalweg of the Kilia arm and the Stari Stamboul, the most southern mouth of the Kilia delta. Roumania was recognized as independent by the Porte.⁴ All fortresses on the Danube were to be razed and no new ones were to be constructed upon its banks, nor were warships to be allowed in Serbian, Roumanian, or Bulgarian waters, except the usual stationaries or guard boats and small police and customs cruisers. The rights, obligations, and prerogatives of the international commis-

¹ *State Papers*, vol. 69, p. 730.

² *State Papers*, vol. 69, p. 627

³ *The Times*, Nov 10, 1877.

⁴ Art 19, for Treaty, see Hertslet, *op cit*, vol. iv, p. 2674, *et seq.*

⁵ Art. 5.

sion on the lower Danube were maintained intact.¹ Turkey agreed to restore the navigation of the Soulina Passage and to indemnify individuals who had suffered loss by the war and by the interruption of navigation, on the Danube, applying 500,000 francs of a debt owed by her by the European commission for this purpose.²

The Roumanians in the course of the war had recognized the importance to them of the destruction of the great Turkish fortresses on the Bulgarian side of the river and wanted them razed. The question of the cession of Bessarabia had already been brought up, and it had already been suggested that the Dobrudja would be given to them in exchange for a cession of Bessarabia to Russia. Roumanian public opinion was strong against this exchange, and in February the Roumanian Legislature openly refused to give up Bessarabia.³

The Roumanian Government protested to the powers after the signature of the treaty of San Stefano against the exchange of Bessarabia for the Dobrudja.⁴ Though Great Britain sympathized with the small State, none of the other powers were willing to take a decided stand against the cession to Russia, so she did not feel able to alone protect Roumanian interests.

The British and Austrian Governments protested vigorously against the proposed treaty on the ground that it would affect previous European treaties and injure European interests. They insisted that it was not valid without

¹ Art. 12.

² Art. 13.

³ *The Times*, Feb. 7 and 8, also Jan. 3, 1878. A report had been started in Vienna that Bessarabia, inhabited by Bulgarians, was strongly pro-Russian and should not be retained (*ibid.*, Oct. 4, 1877).

⁴ *State Papers*, vol. 69, p. 825, and for translations, *Accounts and Papers*, 1878, vol. lxxxii (Turkey), (Affairs of Roumania).

submission to the powers.¹ On February 15 the British fleet was sent to Constantinople in order to give point to the British protest.² On February 5 Austria proposed a conference with the great powers to examine the preliminary peace treaty,³ and on March 7 suggested instead a congress to be held at Berlin to consist of the prime ministers of the powers. The German Government was in favor of the congress and was ready to invite the powers.⁴

After the signature of the treaty of San Stefano Great Britain protested again, noting among her other objections the retrocession of Bessarabia.⁵ Russia in her reply⁶ declared that there was no reason why Bessarabia should not be retroceded, since the liberty of the Danube was placed under the control and guaranty of an international commission, and since she intended to return the islands of the delta to Roumania, thus reducing considerably the importance of the cession in its influence on the navigation of the mouths of the Danube.⁷ Russia first made difficulties to

¹ See the British protest, Hertslet, *op. cit.*, vol. iv, p. 2657; Duggan, *op. cit.*, p. 139.

² Duggan, *op. cit.*, p. 140.

³ Hertslet, *op. cit.*, vol. iv, p. 2668; *State Papers*, vol. 69, p. 794.

⁴ Hertslet, *op. cit.*, p. 2697; *State Papers*, vol. 69, p. 798.

⁵ *Ibid.*, p. 2698.

⁶ *Ibid.*, p. 2707; *State Papers*, vol. 69, p. 815.

⁷ Great Britain held, however, to the importance of navigation of the Danube. In the instructions to Lord Odo Russel, a British plenipotentiary at the congress of Berlin, Lord Salisbury, the foreign minister, said after declaring that England could not alone resist the cession of Bessarabia, that the rights of the powers in respect to the navigation of the Danube must be fully respected, and Russia was not in any case to keep the Dobrudja.—*State Papers*, vol. 69, p. 834.

In the Anglo-Russian secret agreement, Great Britain expressly regretted the retrocession of Bessarabia, but declared that she would not oppose it. In a second memorandum, however, she reserved the discussion of the question of the navigation of the Danube.—*The Times*, June 15, 1878.

submitting the whole treaty to the congress, but her objections were finally overcome,¹ and the date of the Congress was fixed for June 18.

The Danube questions were among the least important before the congress, but the sections of the treaty settling them caused discussions.² During the sessions of July 29, Lord Beaconsfield, the British plenipotentiary, objected to the cession of Bessarabia to Russia. The cession to Roumania by the treaty of Paris was part of an agreement between the powers and Russia to assure free navigation of the Danube, and the treaty of San Stefano contained no guaranty of that freedom. Russia gave up Bessarabia in exchange for the territories occupied by the allies in 1856 to safeguard the freedom of the river. England protested, not in the name of Roumania, the actual possessor of Bessarabia, but in the name of European interests.

The Russian chancellor, Gortchakow, replied that Roumania had done nothing to improve navigation of the Danube; that Turkey had owned the delta since 1857 and it was the European commission that had improved conditions. His government was determined to keep Bessarabia and Lord Beaconsfield might be assured that free navigation of the Danube would not suffer. It was pointed out by the Russians that Roumania would get in exchange a better territory, including a good commercial port on the Black Sea. Prince Bismarck, representing Germany, saw no reason why the retrocession of Bessarabia to Russia, of which he approved, should interfere with the free navigation of the river, on which point he agreed with England.³ The Roumanian delegates were heard at the session of the first of July. They protested vigorously against the cession

¹ *State Papers*, vol. 69, p. 830

² *State Papers*, vol. 69, p. 967, *passim*.

³ *State Papers*, vol. 69, pp. 974, 975.

of Bessarabia and requested in addition that Roumania should receive the delta islands and the Isle of Serpents.¹ Russia made a condition to her agreeing to the independence of Roumania, the acceptance by that State of the cession of Bessarabia.

Lord Salisbury suggested that the new position of Russia as riparian on the river introduced a new element in the situation and wanted to have the question adjourned.²

The powers, however, were not willing to oppose Russia's determination to get hold of Bessarabia and come down to the Danube again, so they approved the exchange for the Dobrudja, which was finally incorporated in the treaty, and the independence of Roumania.

The original Austrian proposal for the regime of the Danube, submitted on the 3d of July, had provided for the neutralization of the river from the Iron Gates to the Black Sea, including the delta islands and the Isle of the Serpents. The fortifications were to be razed, no new ones erected, and all warships to be excluded. The European commission was to be extended as far as Galatz and to be continued until a new agreement. It was to have its own flag and signs and name its own officials. Roumania was to have a delegate. The regulations of navigation and river police below the Iron Gates should be in conformity with the regu-

¹ *Ibid.*, p. 978, *passim*. The French plenipotentiary remarked that France had steadily advised Roumania to accept the cession of Bessarabia, but he asked an extension of territory in the Dobrudja. Austria and Italy supported the claim, and the Russian representatives finally consented to grant a small extension of the southern line of the Dobrudja. At the request of Lord Salisbury the Isle of Serpents was included in the new Roumanian territory (*ibid.*, pp. 934-986).

² Prince Bismarck, as president, refused to consent (*ibid.*, p. 994). Prince Gortchakow replied that the cession of Bessarabia could not influence the liberty of navigation on the river, which was a result of the treaty of Paris, confirming the treaty of Vienna (*ibid.*, p. 995).

³ *Ibid.*, p. 992, *passim*.

lations of the European commission, but it was not expressly stated who should draft them. A commission delegated by the European commission should supervise the execution of these regulations. In the stretch between the Iron Gates and Galatz commerce and navigation should not be affected by any special tax which would favor land communications to the prejudice of the river. The Iron Gates and Cataracts works were to be confided to Austro-Hungary. This last provision was exactly the same as that finally incorporated in the treaty. The Russian representative wanted to know what neutrality meant, and the project was finally referred back to the Austrian plenipotentiaries for revision.

The Congress agreed to include Russia among the riparian states enumerated in the treaty of Paris and to give Roumania representation on the European commission.

At the sitting of the 4th of July¹ the Russian plenipotentiaries submitted a proposition of their own which omitted the Austrian neutralization of the river, substituting for it a confirmation of the liberty of navigation applied to the Danube by the treaties of 1856 and 1871, and omitting both the requirements for a new regulation for the river from Galatz to the Iron Gates and the authorization to Austria to construct the improvements at the latter point. The Russian proposal also omitted extending the jurisdiction of the commission to Galatz.²

The congress then adopted as principles the freedom

¹ *State Papers*, vol. 69, p. 1007.

² It is an interesting comment of the little importance which Prince Bismarck attached to the Danube question that he could see little difference between this proposition and that of Austria-Hungary. The prince also said that the opinion representing the Danube as the great German commercial artery to the Orient was fictitious and that German vessels coming from above Ratisbon did not descend the Danube to export German merchandise to the Orient (*ibid.*, p. 1008).

of navigation and exclusion of warships from the river, the prolongation of the life of the European commission, extension of its powers to Galatz, its independence of territorial power, and the admission of a Roumanian commissioner.

The Russian representative noted that his Government objected to the prolongation of the duration of the European Commission by tacit extension, so that point was reserved for consideration. The conformity of the regulations of navigation and river police on all the course of the river below the Iron Gates was also considered by the Russians as prejudicial to the situation of the riparians and was reserved for discussion. It was agreed to substitute Austria-Hungary for the riparian powers to carry out the Iron Gates improvements. The sections were then referred to a committee composed of one Austrian and one Russian plenipotentiary for a final report. The committee reported its agreement on the extension of the European commission and drafting of the regulations for the river below the Iron Gates in the form of the final treaty.

The Congress, under pressure from Bismarck, worked rapidly, and the treaty of Berlin was finally signed on July 13, 1878. Bessarabia was allotted to Russia, (art. XLV), the delta of the Danube, the Isle of Serpents, and Dobrudja went to Roumania in exchange (Art. XLVI). Roumania was declared independent.¹ Roumania was also prohibited from charging transit dues on goods passing through her territory, a provision which would apply to the Danube, since with the ownership of the delta islands, she owned practically the whole of the maritime stretch of the river (Art. XLVIII).² All fortresses on the course of the Danube, from the Iron Gates to its mouth, were to be

¹ For treaty see Hertslet, *op cit*, vol. iv, p. 2759, *passim*.

² This provision was not of practical importance so long as the treaty of Paris of 1856 was maintained.

razed and no new ones erected. No vessels of war were to navigate the river below the Iron Gates, except light police and customs cruisers. The guard boats of the powers at the mouths of the river could go as far as Galatz (Art. LII).

The experience of the war was evident in the drafting of this provision. The difference in the importance of the Danube as a military frontier must be taken into consideration in estimating the willingness of the riparian powers to consent to these limitations on their rights. The line of defense of the Turkish Empire was no longer along the Danube, but was removed to the mountains of southern Roumelia. Turkey and her friends, therefore, had no further interest in the defense of the Danube line, and Russia, or possible enemies to Turkey, did not need to use warships on the river, since if Russia's army could reach the northern bank of the river through Roumania, it would expect friends in the Bulgarians on the other shore. Roumania feared the powerful forts on the Bulgarian bank and was in no position to go to the expense of erecting counterdefenses. In view of the difficulties of merchant ships during the war, the prohibition of war vessels on the river, which would in practice make it unnecessary to sink stone boats or use torpedoes, was of importance to Austria and to the other powers. Furthermore, permanent injury to the works of the European commission would also be obviated by prohibiting maritime warfare on the river.

The European commission was maintained and its jurisdiction extended to Galatz "in complete independence of the territorial authorities," an important modification in principle, which had already been largely achieved in fact (Art. LIII). Roumania, in whose territory the commission had its seat, Galatz, and now alone exercised jurisdiction, was given a place on the commission (Art. LII). The powers agreed to come to an understanding as to the pro-

longation of the commission within one year before expiration of the term assigned to it (¹Art. LIV). The regulations respecting navigation, river police, and supervision from the Iron Gates to Galatz were to be drawn up by the European commission, assisted by delegates of the riparian States (Art. LV). The commission was directed to assure the maintenance of the lighthouses on the Isle of Serpents. An important section turned over to Austria, in place of the riparian powers, the execution of the works of improvement at the Iron Gates and the Cataracts. The riparian States were to give her all necessary facilities and she was authorized to collect a provisional tax to cover the cost of the works (Art. LVII).

The treaty made Servia an independent kingdom and Bulgaria an autonomous principality under the suzerainty of the Sultan. It continued in force the treaties of Paris and London, so far as their provisions were not abrogated or modified. Art. lxiii.

The Roumanian newspapers were exceedingly bitter at first about the loss of Bessarabia. Very strong feeling was aroused during the session of the congress, but the country finally came to the conclusion that it would be obliged to accept the decision of Europe. The exchange was finally affected and the cession of Bessarabia made at a special session of the Roumanian congress, beginning September 22, 1878.¹

The treaty of Berlin deeply modified political conditions on the lower Danube. Russia had become again a riparian; Turkey was so no longer, except in a rather technical sense as representative of her vassal Bulgaria; Servia and Roumania were entirely free and the latter country now con-

¹See the speech of the prince on opening and closing the congress, *State Papers*, vol. 69, p. 772. For Roumanian opinion see *The Times*, July 5 and 15, 1878.

trolled the whole of the Danube delta to the sea, except for Russia's possession of the northern half of the Kilia arm and of the most important part of the Kilia delta, giving her an independent access to the river. The jurisdiction of the European commission was now practically wholly within Roumanian territory since it exercised no real authority and had carried out no important works on the Kilia arm, though legally its jurisdiction over that territory was not affected. As Turkey, which had always opposed territorial extension of the commission's jurisdiction, had no longer an interest in doing so, the authority of the commission had been extended to Galatz, a Roumanian port beyond the delta, so that the commission had made an important further step in its development as a commerce-regulating as well as an engineering body.

The changes in the regulations of the commission required by the treaty of 1878 were made by an act additional to the public act of 1865, dated May 28, 1881, and ratified by the powers on May 20, 1882.¹ The inspector of navigation who was in charge of the river, the captain of the port of Soulina, both formerly appointed by the Turkish Government as local sovereign, and all other officials and employees, were to be appointed by the European commission. Only a majority of votes were necessary for an appointment, so that the commission acts in this matter as an independent body rather than as an ordinary international body in which unanimity is the rule. These officers take their oath of office to the commission, not as formerly to the territorial sovereign, are paid by it, and pronounce judgment in its name.

The treasury of navigation at Soulina was also put under the exclusive control of the commission, but the interna-

¹For the act see Demorgny, *op. cit.*, p. 337.

tional character of the commission is here evidenced by the requirement that the method of collection of tolls and the operation of the treasury could only be changed by unanimous consent.

The extension of the power of the commission to Galatz made necessary an extension in the limitation of its right to spend its income to correspond with its new territorial extension.

As Turkey was no longer the territorial sovereign, the control over sanitary measures was intrusted to an international commission which was to be constituted at Bucharest, the Roumanian capital, acting in concert with the European commission. The council and the commission were also to arrange jointly for proper hospitals for infectious diseases at Soulina and for hospital taxes ¹

As a result of the difficulties arising from the use of the Turkish flag over the commission's building during the war and as an evidence of its independence, the European commission was given its own flag to fly over its own buildings and on its own ships. Its employees were authorized to wear an arm band in the colors of the commission.²

¹Quarantine was limited to travelers and ships from infected ports and was allowed only in noninfected harbors on the river. If an epidemic became general on the river, restrictive measures in the ports should be removed. In fact, the sanitary council never became an effective organ, so the European commission arranged with the Roumanian Government that the collection of sanitary taxes and management of the funds should be in the hands of the commission. (See Maican, *Le Danube*, Paris, 1904, p. 250; Sturdza, *Recueil*, etc., *op. cit.*, p. xxii *et passim*, referring to negotiations between the commission and the Roumanian Government in sanitary matters.) The sanitary conference of Dresden, 15th of April, 1893, and the sanitary conference of Venice, 18th of May, 1897, provided for visit and detention of vessels in quarantine at Soulina.

²The flag is five parallel bars perpendicular to the staff, red, white, blue, white, red, and the arm band is the same color, art xiii, act of 1881.

A far more difficult task was laid upon the commission by Article LV, requiring it to prepare regulations of the middle Danube. Serbia and Bulgaria, as riparian States had voices in the commission acting for this purpose. There was no serious difficulty over the regulations of navigation, and an admirable set of rules was devised as a fruit of the experience of the European commission. The treaty of Berlin, however, provided for no authority to administer the regulations, and a sharp conflict arose in the commission on this point.¹

The European commission confided the drafting of the regulations to a subcommittee composed of Austria, Germany, and Italy. Their project went beyond the drafting of the regulations and created a mixed commission to apply them, composed of representatives of Austria-Hungary, Roumania, Serbia, Bulgaria, the Austro-Hungarian commissioner to be president and to have the casting vote. Decisions of the commission were to be by a majority, so that Austria-Hungary, by securing the vote of one of the small nations, could control the commission. As the commission could modify the regulations, was the judge on appeal from decisions of the river authorities, and was their administrative superior, Austria-Hungary would thus become the mistress of the middle Danube, upon which she was not a riparian.²

England, alarmed at the risk to her shipping in that part

¹There was no doubt of the need for a uniform rule of navigation on this part of the river, for part of the distance just above Galatz, Roumania held both banks, and the whole northern bank to the Iron Gates was in her territory. On the south Bulgaria was riparian for part of the stretch, Serbia for the balance.

²The Austrian commissioner claimed a right to a seat on the commission because of Austrian commercial interest on that part of the river and her geographical position; his German colleague said that, as the sole great power represented Austria's dignity required that her delegate should preside (see Demorgny, *op. cit.*, p. 249).

of the river, which, under the rule of freedom of navigation, had grown important,¹ insisted that all decisions of the mixed commission should be appealed before the European commission. She also insisted as a corollary that the life of the mixed commission should be limited to that of the European commission.² Roumania objected vigorously to this Austrian attempt to control the middle river. She held that the treaty of Berlin did not authorize any supervisory commission; the sovereign rights of the local states to apply themselves the regulations agreed upon were preserved in the treaty; and in any case Austria, as a nonriparian on this part of the river, had no right to a place on, still less to control of, the commission.

The Russian representative was unwilling to accept the Austrian plan without consent of his Government, and thought also that in any case disputes in the mixed commission might be settled by the European commission instead of by the casting vote.

In the face of evident disagreement, the French commissioner, Barere, proposed a plan which received all votes but that of Roumania. Austria-Hungary was to have a seat in the mixed commission, but instead of giving her a casting vote, a member of the European commission, chosen in rotation for a period of six months, should also have a place, thus making five votes in all. The mixed and the European commissions were to cease to exist at the same time, and the mixed commission could not change regula-

¹ *Ibid.*, p. 254.

² England requested again the extension of the jurisdiction of the European commission to Braila and wanted the absolute freedom of navigation to the Iron Gates assured (see *ibid.*, p. 255).

³ As the members of the European commission take their turns according to the letter of the alphabet, beginning the names of their respective countries in French, Germany would have had the extra vote for the first six months.

tions without consent of the European commission. The inspector of navigation and the district inspectors were to be appointed and paid by the mixed commission, but captains of the port were to remain officers of the local States.¹ Roumania proposed as an alternative that the mixed commission should consist of one member for each of the three riparian States, and two members of the European commission, taken in rotation for six-month terms, except that the Roumanian delegate in the European commission should not sit in the mixed commission. The mixed commission should only have supervisory powers. The appointment of river officers would remain in the hands of the respective riparian States, and appeals from their decision could be taken either to the mixed commission or to the court of appeals of the riparian States.¹ The regulations of navigation expressly assured freedom of navigation to all ships up to the Iron Gates, a provision which could not be changed without the consent of the powers.²

In the face of the refusal of Roumania to accept the Barere plan and of the necessity to take action in regard to the expiration of the life of the European commission, negotiations were begun by England for a conference. The powers finally agreed to assemble in conference to determine (1) the extension of the powers of the commission to Braila; (2) the approval of regulations in regard to the middle Danube; (3) the prolongation of the commission. The exchange of notes relative to the proposed conference brought out clearly the nature of the bargain which was to

¹ Baicoiu, *op. cit.*, p. 229, gives parallel columns of the Barere and Roumanian propositions.

² The Austrian delegate at one time during the discussion maintained that the complete liberty of navigation decreed by the treaty of Paris of 1856 only extended to the jurisdiction of the European commission, a reaffirmation of the principles of the riparian treaty of 1857 (see Demorgny, *op. cit.*, p. 260).

be made. England desired to secure the permanency of the commission and the extension of its powers to Braila, Russia wanted certain concessions in the Kilia Channel, and Austria-Hungary desired the acceptance of the Barere proposal for the mixed commission. Serbia, Roumania, and Bulgaria sought insistently for admission to the conference, and Serbia and Bulgaria especially argued that they had equal rights with Roumania, who, on account of her representation in the European commission, might have been preferred as against them.¹

The conference met in London the 8th of February and closed its session on March 10, 1883. The treaty of London, which was there agreed upon, satisfied to a limited extent all the great powers and gave no substantial consideration to the request of the small riparian States.²

The jurisdiction of the commission was extended to Braila and prolonged for 21 years from April 24, 1883, then to be extended for three-year periods unless one of the contracting parties, a year before the expiration of one of the terms, should notify its intention of proposing modifications in the constitution or powers of the commission.³

The Kilia branch was taken away from the control of the European commission. Russia and Roumania were to apply the regulations of the European commission on that part of the river which divided their territory, but no such

¹ *Accounts and Papers*, 1883, vol. lxxxii, correspondence respecting the navigation of the Danube. Dispatch to Her Majesty's Representatives abroad Respecting the Navigation of the Danube, and Conference relating thereto. Sturdza, *Recueil des Documents*, p. 275, *et seq.*

² Hertslet, *op. cit.*, vol. iv, p. 3104, *et seq.*

³ The three-year provision was adopted on account of the correlation between the mixed commission and the European commission, so that each of the six powers represented on the European commission, who also by rotation had a seat on the mixed commission should have its term on the mixed commission (see Dispatch to Her Majesty's Representatives Abroad).

limitation was laid upon Russia as to that part of the Kilia branch and delta wholly within Russia. Russia and Roumania must communicate plans of intended work to the European commission, solely, however, to allow that commission to determine whether they interfered with the navigability of other mouths of the Danube and in case of a difference of opinion the case was to be submitted directly to the powers. Russia got the unrestricted right to levy tolls to cover the expense of works undertaken by her, but she was obliged to "put the Governments represented in the European commission in possession of the regulations respecting" these tolls, so as "to insure an understanding."

The treatment of the small Danube States was actively debated at the conference. The questions at issue, in particular the question of the mixed commission, affected Bulgaria, Roumania, and Serbia, since the commission would have jurisdiction in the territory of each one of them. It would control the whole Danube front of Bulgaria and that part of the Roumanian river which was not subject to the European commission. In view of their special interests it was urged, particularly by England and France, that Roumania² and Serbia be allowed a vote in the conference, but on the objection of Germany it was finally decided to admit them only in an advisory capacity without a vote.³

¹ Protocols in French with translation are in *Accounts and Papers*, vol. lxxxii, 1883. Protocols of Conference held in London respecting the Navigation of the Danube.

² Before the conference, Austria and England had promised to approve the admission of Roumania with full powers, in view of her special position on the river and by virtue of the treaty of Berlin (letter of Italian ambassador to minister of foreign affairs, Mar. 10, 1883, *Archives Diplomatiques*, 1884, 2nd ser., p. 33, *passim*).

³ The German representative said that this conference was a continuation of the previous European conference; that to allow equal representation to Roumania would be to allow her to control the acts of the great powers by her veto. Such a condition was undesirable. Serbia was given the same status as Roumania at the suggestion of Lord Granville, representing Great Britain (protocol No. 1).

Serbia accepted the position made for her, but Roumania refused.¹ The representatives of Bulgaria, as a vassal State of Turkey, were allowed to be present, but only to communicate with the conference through the Turkish ambassador, who promised to report textually their communications; but the principality, like Roumania, refused this position and declared she would not be bound by the act of the conference.² In a communication to the conference Bulgaria said that she had had a representative on the commission which had drafted the middle-river regime; that Turkey had often opposed that representative, so that her interests and those of Turkey clashed and Turkey could not, consequently, fairly represent her on the commission.³

Great Britain tried to have the European commission made permanent, but, though supported by France, Italy, and Turkey, she was unable to secure the votes of the other powers. The provision incorporated in the treaty was suggested by the French envoy and was accepted by Great Britain as the best obtainable. Both Russia and Austria frankly pronounced against the permanence of the commission. Serbia requested a seat on the commission on the special ground that it was to extend its jurisdiction, through its connection with the mixed commission, over the whole of the lower river to the Iron Gates, and in consequence would occupy itself with questions which directly touched the interests of Serbia. Though supported by Austria and Russia, the latter power urging also that Bulgaria had a better right than Serbia, for the same reasons, the conference, under the leadership of Great Britain, refused to accede to the request.⁴

¹ *Letter of Italian Ambassador*, pp. 38-39; protocol no. 3.

² Protocol no. 4.

³ Annex to protocol no. 3.

⁴ Protocol no. 4. Lord Edmond Fitzmaurice, the second British pleni-

At the second conference the Russian ambassador plainly showed that he had a bargain to make when he refused to decide, except provisionally, on the question of prolongation of the power or jurisdiction of the European commission. He proposed his bargain in the course of the fourth session. He said that the Kilia arm had not been improved by the European commission, which had chosen the Soulina arm for development, and that consequently the Kilia Arm which should be improved in the interests of the territory tributary to it, was neglected. The European commission was a limitation on territorial sovereignty which should extend only to the actual necessities of the case. Clearly the commission by its neglect of the Kilia arm showed that there was no need for the limitation on Russian sovereignty implied in its jurisdiction over that stretch of water, so the Russian Government proposed, while respecting the principle of free navigation in the Kila arm, that it should be freed from the jurisdiction of the commission and returned to that of the riparians. In case of any dispute with the European commission over projected improvements the difficulty would be carried directly to the contracting powers to determine whether the Soulina arm would be injured. Russia would take into considera-

potentiary, said that the exception in favor of Roumania which gave her a place on the European commission, though not a great power, was her exceptional position. She was mistress over both banks of the greater part of the river regulated by the commission, and the seat of the commission itself, Galatz, was in her territory. The navigation below Galatz had been confided by Europe to a nonriparian commission, but the navigation above Galatz was to be in the hands of a mixed commission, principally riparian, so that the admission of Serbia to the mixed commission does not stand on the same basis as her admission to the European commission.

The Russian ambassador, while congratulating the European commission on its ability, said that the question of liberty of river navigation was not bound up with "an essentially precarious institution" (see protocol no. 4).

tion the recommendations of the European commission for the regulation of tolls subject to an appeal to the powers in case of disagreement.¹

At the fifth session the British representative submitted a modification of the Russian proposition. His proposition contained as its first two provisions the statement which subsequently became Articles III and IV of the treaty. The important point he made was that the Kilia branch was not taken expressly from the commission, but it was simply provided that the commission should not exercise effective control on that part of the arm whose two banks belonged to one riparian, that is to Russia. For that part of the arm which was a boundary between Russia and Roumania the administration of the regulations of the European commission were to be applied, not by the commission as a whole, but by the commissioners of Russia and Roumania. The commission would thus remain the legislative body for the

¹The matter had been previously discussed between Lord Granville and the Russian ambassador, and the British Government saw no reason for insisting that the European commission should appoint its own officers for direct control of the navigation in the Kilia branch or the levying of tolls. Before the works were undertaken or tolls levied the plans of the works should be examined to establish the fact that their execution would not injure the Soulina branch and that the tolls should be fixed in such manner as to avoid clashing of interest between the Russian authorities at the Kilia and the European Commission at the Soulina mouth (see *Accounts and Papers*, 1883, vol. lxxxii, Dispatch to Her Majesty's Representatives Abroad respecting the Navigation of the Danube, pp 5 and 7).

This proposition had already been made to Lord Granville, who had not come to an agreement with Russia over it. A very difficult point was the unwillingness of Russia to submit her proposed tolls to the European commission. It was important that there should be a check on these tolls so that for a time the success of the conference seemed in the balance; but after active correspondence with the cabinets the compromise finally agreed on was submitted to the members of the conference in writing and then adopted in a meeting (see letter of Italian ambassador at London to minister of foreign affairs, p. 42).

boundary part of the river. As it was not probable that Russia would introduce conflicting regulations for the short stretch of the river wholly Russian, the practical effect of these provisions was that the legislation of the commission would be applied to the Kilia arm, except in the matter of tolls. It was agreed by a statement in the protocol that the agents of the European commission might travel in the Kilia arm at will.¹ Russia would supply copies of plans of works in the Kilia to the European commission in order that it be determined that they did not interfere with the navigation of the Soulina arm.² The toll regulations of Russia were also to be communicated to the European commission, and in case of difference in regard to plans of works or tolls the case should be submitted directly to the powers.

The project was referred back to the Russian Government, which proposed changes³ through their ambassador. By these modifications Russia got a certain control over the works in the Tchatal of Ismael, which were partly in the Kilia arm, by a provision that if there were differences of opinion in the commission itself as to the extension of these works, the matter should be referred directly to the powers. As Russia was represented on the commission, and as the internal regulation of the commission made the actions of the commissioner practically the action of his Government on important matters, the result of this innocent-looking provision was to make it possible for Russia to call for a decision of the powers, which means unanimity, on any extension of these works. Instead of submitting the toll regulations to the European commission, the Russian Gov-

¹ Protocol no. 7.

² Certain works at the juncture of the Soulina and Kilia arms, important for navigation of the Soulina, were left in the control of the European commission. These works were known as the Tchatal of Ismael improvements.

³ Protocol no. 7.

ernment suggested the provision incorporated in Article VI of the treaty that the Russian Government should deal directly with the Governments represented in the European commission. But it was expressly declared in the protocol by the Russian representative that no tolls were to be put in force until after the approval of the powers.

At the second sitting of the conference Austria put forward the demand for her share of the bargain. Observing that the regulations of navigation for the middle Danube had been adopted by the European commission at Galatz, and that it was therefore unnecessary to discuss them again, the ambassador remarked that the conference should take into consideration the question of the participation of Austria-Hungary in the mixed commission and the executive character of the commission. These points were essential to the success of the regulations. Austria-Hungary's participation in the mixed commission would be a guarantee of the liberty of navigation on the Danube, and the fear of her supremacy would be rendered chimerical, as the existence of the mixed commission was to be linked up with that of the European commission. Austria only desired a seat in the mixed commission in order to protect her legitimate interests and those of international navigation. The mixed commission must have executive powers if the regular execution of the regulation prepared by the European commission were to be assured.¹

The plenipotentiaries adhered to the regulations, the French plenipotentiary observing that he hoped there would

¹In the course of the exchange of notes previous to the calling of the conference Austria had frankly stated that she did not have confidence in the impartiality and reliability of the territorial authorities on the lower river, and, therefore, could only trust the mixed commission with Austrian representation with the execution of the river regulations. (See Memorial of January 18, 1883, *Accounts and Papers*, *op. cit.*, Correspondence respecting Navigation on the Danube, p. 45.)

be an understanding with regard to certain matters of detail. The Russian plenipotentiary suggested a four-year term for the mixed commission, in case the same term was agreed upon for the European.¹ The modifications in matters of detail were submitted by the Austrian Government and incorporated in the third protocol. Austria renounced the right to have her representative on the European commission sit also in the mixed commission, provided Roumania would do the same, thus preventing either power having a double voice in the mixed commission. She also accepted the Roumanian demand for longitudinal division of the river instead of the transverse division of the Barere plan. She also agreed that the subinspectors might be either proposed by the riparian States, nominated by the mixed commission and confirmed by the riparians, or proposed by the mixed commission and appointed by the riparians. The Barere proposition had divided the river into horizontal districts, opposite banks being in the same district, and the subinspectors were to be appointed by the commission. Roumania desired that the inspection districts should run along each bank in order that each district should be in the territory of a single State, and that the subinspectors should be nominated by the local authority. The concession made by Austria was a very important one, and from the point of view of administration, particularly in a river like the Danube, whose navigable channel frequently changes, it would be much better to have kept the whole breadth of the river under the same administrative official. The jealousy of the small States for their sovereign rights, however, did not allow them to view the matter from the standpoint of general utility. These concessions, while important, did

¹The four years were selected to give one six month's term to each of the eight powers represented in the European commission having representation in the mixed commission according to the Barere plan.

not meet the main points of the Roumanian objection, that the whole administration of the regulations should be in the hands of the local authorities and that Austria should not have a seat on the mixed commission, since she was not riparian. These modifications were made at the suggestion of the French representatives, and at their further request, Austria later went a step further and admitted that the sub-inspectors might be appointed, paid, and discharged by the riparian States alone.¹ She also made an attempt to have the regulations made "executory," but Russia objected that it would be difficult to put into force regulations which had not been accepted by all contracting parties. The Russian plenipotentiary hoped that the harmony existing between the European powers would become a normal force capable of producing a conciliatory disposition on the part of Roumania, but it would be going too far to declare the regulation obligatory. The Austrian representative then agreed to abandon the word "executory."²

No one of the powers got all that she desired. England made an important gain by the extension of the jurisdiction of the commission to Braila and by continuing its life, but she was unable to secure its permanence owing to the opposition of the two great powers riparian to the Danube—Austria-Hungary and Russia. Austria seemed to have made an important advance in her influence in the lower Danube, but events were to deceive her expectations. Russia gained the most solid advantage, and her new position at the Kilia mouth aroused great anxiety over the possible competition with the Soulina Channel. It was feared

¹ Protocol no. 7.

² The plenipotentiaries drew up and signed a collective declaration adopting the regulations of navigation and expressing the hope that States not taking part in the deliberation of the conference would defer to this unanimous vote and adopt the regulations, meaning Roumania. (Protocol no. 3.)

that she would develop the Kilia branch by works at the mouth of the river and then, by giving favorable conditions to vessels, entice them all away from the Soulina mouth, cutting off the income of the commission, thus preventing it from keeping up its works. Eventually the Kilia arm would be the only practicable entrance to the Danube, the work of the European commission would go for nothing, and Russia would be the mistress of the navigation on the river.¹ As a matter of fact, no such condition has developed. Russia was not active on the Kilia arm, and Roumania had thoroughly resolved to defend its rights as a riparian State.² Russia's gain in London therefore brought her no great practical advantage.

Roumania never approved the treaty of London or the regulations for the middle river, so that the mixed commission never came into being, and consequently Austria-Hungary got no benefit from her share of the bargain. Roumania maintained that a nonriparian State should not have a seat on a riparian commission, so that as Austria-Hungary was nonriparian to the middle Danube, Roumania positively refused to allow her a place on the commission which should control that part of the river. The Roumanian Government furthermore maintained that the right of a riparian State to administer the regulations of navigation through its own officers, in its own territory, was inherent in the sovereignty of the State and should not be handed over to an international commission. She persisted in this attitude, and no amount of persuasion affected her.³

¹Geffken, *La Question du Danube*, p. 45.

²Demorgny, *op. cit.*, p. 296; Baicoianu, *op. cit.*, p. 93.

³For discussion of the Roumanian position, see note of D. Sturdza, Minister of Foreign Affairs of Roumania, to the Roumanian Minister at London, May 24, 1883, in *Archives Diplomatique*, 1884, 2nd ser., vol. ix, p. 60, *passim*.

See also Holzendorf, *Roumaniens Uferrechte an der Donau*, Leipsic,

The proposal made at the conference of 1883 that Serbia be given a place on the European commission was repeated at the time of the annexation of Bosnia and Herzegovina by Austria and the declaration of independence of Bulgaria in 1908. Serbia was then promised by Austria-Hungary a place on the European commission of the Danube as part of her compensation for agreeing to the annexation. The projected European conference, however, to discuss the affairs of the Balkans never took place, so nothing came of this attempt of Serbia to get a place on the Danube commission. In Roumania there was a strong opposition to it made on the part of practically all the Roumanian parties in spite of the agreement of Sturdza, the Roumanian minister.¹

The position of the European commission as administrator of the rules of navigation at the mouths of the Danube and in the port of Soulina has necessarily led to conflict with the Roumanian Government. This is particularly the case at Soulina, where the administration of the port is in the hands of the European commission, so far as the handling of ships and loading and discharge of cargo is concerned, but the civil and criminal jurisdiction solely in the hands of the Roumanian regular authority. A vessel on entering the harbor reports to the captain of the port of the European commission, is assigned a berth by that official, who supervises the operations of loading and discharge of cargo. Breaches of the navigation or toll regulations are punished

1883; Geffken, *La Question du Danube*; Bittel, *Über das Flussschiffahrtsrecht der Donaumündungen*; Englehardt, in *Review International*, 1883, vol. xv, pp. 5, 340; *ibid.*, 1884, vol. xvi, p. 360; Pitisteano, *La Question du Danube*, p. 52; Bonfils, *Droit International Public*, edition of 1914, p. 353; Baicoianu, *Le Danube*, p. 91, *passim*.

Great Britain sent a circular note to her ambassadors with an account of the conference and hoping that Roumania would approve the regulations—Dispatch of Mar. 14, 1883. *Accounts and Papers*, 1883, vol. lxxxii, correspondence respecting navigation of the Danube.

¹ Demorgny, *op. cit.*, pp. 273, 297, *passim*.

by fines imposed by the captain of the port, or by the inspector of navigation if they occur on the river, with no authority to interfere on the part of the Roumanian Government. The lighterage, tug, and pilot services are wholly under the control of the commission and are carried on by persons licensed by it. Therefore the commission, in addition to its power to fine, has the drastic power of withdrawing licenses from men connected with any of these services, a power it uses to punish theft of cargo or other breaches of duty.

The European commission has no power to punish crimes or to hear civil suits for damages, for example, in case of collision or in case of dispute over nonfulfillment in the port in the terms of charter. The Roumanian police authorities and civil courts alone exercise jurisdiction in those cases. Only Roumanian policemen may go on board ships and arrest criminals; only Roumanian police courts can punish them for crime, and the punishment is that fixed by the Roumanian laws, being in addition to the fine imposed by the European commission where there is a breach of its regulations. Civil cases are tried in the Roumanian courts, and here difficulties may arise in case of a difference between the reports of the officials of the European commission and of Roumanian authorities.¹ Naturally the captain of the port is jealous of his authority and does not look with a favoring eye on the operations of the Roumanian officials;² and on the Roumanian side it is claimed that the

¹ The latter are, of course, accepted as authoritative by the courts, but it is said that the European commission, if appealed to by one of the parties in the case, will see that its view of the facts is put before the court, and will use its influence to have that view accepted. The reports of the European commission being usually better prepared and better supported by testimony than those of the Roumanian commissariat maritime are more depended upon by the foreigners interested in shipping.

² Baicoianu, *op. cit.*, p. 126.

conflict of jurisdiction results in confusion, in difficulty of establishing the facts and of taking prompt action, so that there is a great loss to shipping people and insurance companies through the fraud of agents and captains which the Roumanian officials are helpless to prevent. On the other hand, a representative of European shippers says that the European commission gives a very good administration in Soulina, and that its operation should not be changed.¹

Soulina was declared a free port on the 29th of April, 1870, by the Ottoman Government at the request of the European commission, a situation which was confirmed by the Roumanian Government in 1879.² Consequently, merchandise not introduced for consumption through the customhouse of Soulina is passed up the river without formality. Statements of cargoes and stores on board are made to the Roumanian customs authorities through the captain of the port, to whom all ship declarations are made. The customs authorities frequently visit vessels to determine whether there is an excess of tobacco on board over the amount entered for consumption of the crew.

The commission holds regular sessions twice a year, in May and October, to decide important questions, fix its budget, and modify regulations. At each session the president is chosen in rotation according to the alphabetic

¹ For discussion of this situation, see *ibid.*, p. 123, *passim*; Demorgny, *op. cit.*, p. 302.

After noting that the Roumanian port regulation is not applicable to Soulina, "where the exercise of river police and supervision belongs to the European commission," Demorgny, a former secretary of the European commission, remarks that affairs of a mixed character, touching at the same time the service of the European commission and the territorial authorities at Soulina, are regulated by means of a special agreement for each particular case. This parallel action occasions numerous difficulties, and in this regard the diplomatic mission of the Roumanian delegate to the commission is particularly delicate (p. 207).

² Demorgny, *op. cit.*, p. 207.

order of the powers represented. On the request of five delegates, the commission may hold extraordinary sessions. At least five delegates must be present for an ordinary session, but other delegates may vote by letter. In its full session a majority is necessary on questions of form, interior service of the commission, its relations with its subordinates, and questions of administration and change in the tolls, but unanimity of those present is necessary for important questions of principle [fond]. In such cases, in spite of the unanimity of those present, a decision is only final if no absent delegate has contested it within two months after it has been entered on protocols and communicated to him.

A resume of all points to be discussed at the coming session is sent to each member of the commission a month previous to the date of the meeting and all matters subsequently arising are communicated in writing to the delegates. Propositions arising in the session can not be discussed at the session. An increase in tolls can only be voted on at the regular session following that at which it is proposed. Consequently, an opportunity is always given for a delegate to consult with his Government on any question of importance.¹

The delegates present at the seat of the commission to the number of at least three form a court to hear appeals from the decisions of the captain of the port of Soulina or the inspector of navigation.

The executive committee sits in the interval of the sessions, acting either by its own authority or by consulting delegates—by wire if necessary. It is composed of all the members who happen to be present at the seat of the com-

¹ Maican, *op. cit.*, p. 222, *passim*. For the internal regulation of the commission (in French) see Sturdza, *op. cit.*, p. 127, *passim*, in English, see appendix.

mission, whatever their number or the length of their stay. It is the chief agent of the commission, acts in its name, directs current matters, supervises the execution of its decisions, signs all papers, and prepares the budget. Even if a single member is at the seat of the commission, he has full power to dispose of urgent affairs. Two delegates present at the seat of the commission are delegated in rotation, each for one month, one for the administration, the other for the finances.

In the deliberations of the executive committee the decisions are by a majority; but if there are questions for which unanimity is requested the executive committee warns, telegraphically, absent members. If they do not answer within ten days, the committee orders the decision carried out. A copy of the minutes of the executive committee is sent monthly to each absent member again emphasizing the importance of keeping the Governments informed as to the actions of the commission. If a delegate who chances to be alone at the seat of the commission is compelled to leave, he notifies his colleagues by telegram, and if no one of them can take his place, transfers the direction of business to one of the chiefs of service at Galatz, who then directs current business and supervises the execution of decisions, signing all papers, including pay checks.

The salaries of the commissioners are paid by their respective countries. All other expenses incurred by the commission are met from its own resources.¹

The commission lays and collects tolls on vessels using the river, which are paid into its own treasury. Its expenses are paid through its own officials from this treasury. It appoints, by majority vote, its own employees, and may discharge them, and has, therefore, complete control over them. It makes arrangements with the Roumanian Gov-

¹ *Accounts and Papers*, 1907, vol. lxxxvii, p. 7.

ernment in regard to sanitary matters and has established and operates two hospitals in the port of Soulina, one a maritime hospital for seamen and the other a hospital for infectious diseases. Residents of Soulina are admitted to either of these hospitals. It has supervision of the light-houses on the Isle of Serpents and at the mouths of the river and has entire control of the marking of the channel up to Braila. It has complete control of the engineering work in the Soulina mouth of the river and in the river itself as far as Braila, without any right of the local Roumanian Government to interfere. It controls the lighterage, towage, and pilotage facilities of the harbor of Soulina and in the river to Braila. It licenses tugs, lighters, and pilots, and therefore has complete control over them, as it may withdraw licenses on conviction of dishonesty or breach of the rules of the commission, in addition to its general power to impose fines. It has control of the port of Soulina so far as navigation interests are concerned. It has judicial power to impose fines and withdraw licenses for the contravention of its regulations of navigation or toll, but it has no civil or criminal jurisdiction, both of which are in the hands of the Roumanian authorities. Its judicial power is exercised in the first instance by its chief officers, the captain of the port whose jurisdiction extends over the port of Soulina, and the inspector of navigation, who decides cases arising on the river. In each case appeal may be made to the commission.

It has no police force of its own, but depends on the guard ships which the powers represented in the commission are authorized to keep at the mouth of the Danube. The guard ship of each power, at the request of the commission's officials, uses force against vessels flying its flags, and the Roumanian guard ship, as belonging to the territorial power, exercises the same authority over vessels of states not represented.

In view of the remarkable powers of the commission, it is highly important to recognize that it is in fact not an independent body, responsible only to itself, as might appear. In the first place, its members serve at the will of the powers who appoint and pay them, so that they can be removed at any time if their course of action is displeasing to their Governments. It has been usual to appoint consular or diplomatic officers to these posts. In all essential matters it is furthermore under the control of the Governments represented. It meets regularly twice a year, in April and October, though special meetings may be called by five delegates. A month before each regular meeting the matters to be brought before the meeting must be communicated in writing by the central office to each commissioner, thus giving the Governments an opportunity to instruct their commissioners in case of need. Unanimity furthermore is required for important legislative decisions and the power of the majority to pass other regulations may, in fact, be limited by the requirement just mentioned and also by the provision that a proposition to raise or lower the tolls, which is within the power of the majority, may not be voted upon until the next regular meeting to that at which it is submitted. An opportunity is thus given for negotiation and for finding out the desires of the Governments.

An interesting evidence of the influence of the Governments is found in the provision of the treaty of 1883 by which the Kilia arm was transferred to Russian jurisdiction; but certain works at the junction of the Kilia and Soulina arms were left under the control of the European commission. As the works might affect the Kilia arm, the Russian Government was anxious that the commission should not have complete authority over them, and it secured its point by a provision that if there was a difference of opinion in the commission in regard to the extension of this

work, there should be an appeal directly to the powers. Evidently Russia, who had a representative on the commission, would see to it that there would be a difference of opinion if the Russian Government desired it.

✓ The European commission, while it proves that the powers can, by a joint administrative body, with wide powers, regulate and control navigation and carry out all engineering works on an international stream running through the territory of a weak country, is not an example of an independent international body acting on its own initiative in important matters

CHAPTER IV

OUTSIDE THE JURISDICTION OF THE COMMISSION

OF all tributaries of the Danube, only two, themselves international rivers, were subject to international organization. The Save, a boundary river between Serbia and Austria-Hungary, was governed by the treaty of February 22, 1882.¹ Navigation on the international part of the river was free to both countries and no tolls could be laid on boats or cargoes. There was, however, no international commission created, and it was only provided that the police authorities of both countries should aid one another in the performance of their duties upon the river.

The Pruth rose in Austria-Hungary, then became the boundary between Russia and Roumania and enters the Danube above the delta. On September 15, 1866, the three powers signed a convention regulating navigation upon the river which was in force at the time of the outbreak of the war, as modified by the convention of 1895.² The treaty is marked by great liberality. Navigation is entirely free to all flags and no tolls may be levied on boats or cargoes except for the purpose of covering the expense of improvements and maintenance of the navigable channel. A mixed commission composed of representatives of the three powers is created to draw rules of navigation, which form the law

¹ *State Papers*, vol. 73, p. 519; Martens, *op. cit.*, 2nd ser., vol. viii, p. 345; Neumann, *Recueil, op. cit.*, N. S., vol. xi, p. 1441.

² Neumann, *op. cit.*, vol. xx, N. S., p. 452; Demorgny, *op. cit.*, p. 364.

for civil as well as police cases, fix the tolls, design and carry out the works of improvements in the channel of the river and supervise the maintenance of navigability and the application of the regulations. By common agreement it appointed an inspector whom it pays from the tolls, and who in addition to his supervisory power manages the two tolls collecting agencies. He and the toll collectors have an international character.

The Governments keep close control of the commission. Its regulations and plan of river improvement must be approved by them, the force upon which it depends are Russian posts at Ungheni Russe, the upriver toll station, and a Roumanian post at the mouth of the Pruth. Each riparian state appoints for its own territory its own river police, and its sanitary and quarantine stations are under the control of the local riparian authorities.

Judicial authority is vested in the toll collectors to punish breaches of the toll regulation and in the inspector of navigation, of the navigation regulation, with appeal in each case to the permanent mixed commission within three months. The inspector may also prohibit navigation on the river by any person who has been three times convicted of a breach of the regulations.

The Iron Gates and the Cataracts form the principal impediment to the navigation of the river. They occur at a point where the river breaks through the mountains forming the division between the middle Danube and the Roumanian plains. The river is very sinuous, and for a distance of 120 kilometers, ending in the rapids of the Iron Gates, navigation is interfered with by rapids, reefs, and banks, so that for large boats the season of navigation was very short, and it was even impossible for any boat to get up the river at certain seasons of the year when the water was low. The great difficulty with navigation was the

shallowness of the water caused by the rapidity of the current¹ Powerful light-draft steamers and small boats only could pass the rapids, particularly those of the Iron Gates, and even they were in great danger of accident. As a consequence the port of Turnu-Severin became a center where the transfer from larger boats was made into boats which could pass the obstacle.²

Austria attempted during the second quarter of the nineteenth century to improve the navigation of these rapids, but her works were not very successful and the difficulties in connection with the riparian commission of the treaty of 1856, prevented work after that time.³

As a consequence of the prohibition in the treaty of Paris against tolls on the river, Austria-Hungary was compelled to ask for an authorization in 1871 at the conference of London to charge tolls to reimburse the cost of the works of improvement at the Iron Gates which she had in view. She endeavored to have the conference authorize her alone to carry out the improvements, but was unable to get the consent of the powers, and the duty was confided to the States riparian to the river at the Cataracts and Iron Gates. A mixed commission was appointed by Austria-Hungary and Turkey, which presented a report in the year 1874, but the Russo-Turkish war prevented any result coming from the joint effort of the two States.

¹ See *Entwicklungs Geschichte des Eisernen Tores*, J. Cvijic, Petermann's *Mitteilungen*, 1908, vol. 34, *Erganzungs heft*, no. 160.

² Baicoianu, *op. cit.*, pp. 133-135; Demorgny, *op. cit.*, pp. 10-11; Blociszewski, *The New Canal of the Iron Gates*, in R. G. D. I. P., vol. iv, 1897, p. 104.

³ The importance of the improvements was recognized at a conference in Paris in 1858. Lord Cowley, the British plenipotentiary, called the attention of the conference to the necessity of carrying out the works of improvements by the riparians (Baicoianu, *op. cit.*, p. 135, protocol no. 18, Conference of Paris in 1858).

In 1878 Austria succeeded in having the construction of the works confided to her alone. The stretch of the river to be improved formed the boundary, with Serbia on the southern bank, Austria-Hungary and Roumania on the northern bank. Austria-Hungary promptly negotiated a treaty with Serbia by which she was given the right to carry out the necessary works in the Serbian part of the river.

Financial difficulties prevented action by Austria-Hungary till 1888, when the Hungarian Government was given the authority to carry out the work. The canals were begun in 1895 and terminated in 1899. The work consists in improvements and canals in the bed of the river. They have been much criticized as being unsatisfactory, and it has been estimated that sixteen to twenty millions of crowns (about three and a quarter million dollars) should be spent upon them to achieve the end in view. About forty millions of crowns were spent in the original works.¹

The works have, however, very materially improved the conditions at the Iron Gates. Barges of 700 tons are towed, one or two at a time, through the Cataracts and Iron Gates, but the large 1,000-1,500-ton barges used on the lower river must be unloaded at Turnu-Severin into smaller barges.² The Hungarian Government has installed cables and provided powerful tugs to tow barges up the canals. The total movement of vessels at the Iron Gates increased from 1,175 in 1899-1900 to 2,686 in 1912, and the tonnage nearly tripled.³

¹ Baicoianu, *op. cit.*, pp. 148, *passim.*, citing Austrian authors; Demorgny, *op. cit.*, pp. 14-15; Cvijic, *op. cit.*, pp. 12-13; Blociszewski, *op. cit.*; Kende, *Weltwirtschaftliches Archiv*, 1917, p. 242.

² For an excellent account of the navigation at the Iron Gates, see *Jahrbuch des Schiffbautechnischen Gesellschaft*, vol. xviii, 1917, ch. xi; Kende, *op. cit.*, p. 240, *passim.*

³ Baicoianu, *op. cit.*, p. 153; Kende, *op. cit.*, tables, pp. 296-297.

The Hungarian Government published on the 14th of July, 1899, regulations relating to the navigation and tolls on the improved stretch of the river between Moldova, in Hungary, and Turnu-Severin, in Roumania, the Iron Gates and Cataracts. The tolls were laid both on vessels and cargo, and were reduced for certain goods.¹ Passenger vessels making regular weekly trips paid the full tax for goods but only half the vessel tax.

The tax was complained of by the Roumanian authors as very heavy. It amounted to 2 francs 15 centimes per ton of cargo, which, in view of the fact that three-fourths of the loaded barges return empty and must pay another toll on their return made the real cost for a ton of goods shipped through the improvements amount to 2 francs 35 centimes.² Furthermore, the articles for which a reduction of toll was allowed were, it is said, Hungarian, while no reduction is allowed for wheat, which would practically benefit Roumanian cereals sent up the river. The returns from the tolls, however, did not cover the total cost of operation plus the sinking fund and interest. The deficit in 1912 amounted to 724,698 crowns, and the total deficit since 1899 amounted to 14,177,316 crowns.

The Hungarian Government, in addition to its toll regulations, at the same time issued regulations for navigation for the improved part of the river. As the stretch of the river affected belongs in part to Roumania and in part to Serbia, the Roumanian Government objected to the enforcement of the rules in Roumanian waters. In fact, however, the works are principally on the Serbian side, where the river forms a boundary between Roumania and Serbia, so that the Roumanians could only prevent the enforcement

¹ The reduced tolls were for boats fully laden with coal, stone, gravel, cement, lime, cordwood, fertilizer, petroleum or its derivatives.

² Baicoianu, *op. cit.*, p. 143.

of the rules in their territory and could not interfere with their enforcement practically over the whole of the improved stretch. Roumania objected to the assumption by the Hungarian Government of control over an international river and was fearful of the use which the Hungarian Government might make of its power to make regulations and to levy tolls. It would have been easy for Hungary to discriminate against Roumanian goods and by regulations to delay and interfere with Roumanian vessels.

The language of the authority was Hungarian, a tongue with which few navigators on the river were familiar, and the authority, though exercising control over an international stream, was a part of the Hungarian administration. All complaints were determined in the last instance by the Hungarian minister of commerce.

There is no authority in the treaty of Berlin of 1878 for the regulations issued by the Hungarians, and from the Roumanian side it was argued that the authority to levy tolls, authorizing as it did only the levy of a sufficient amount to cover the cost of the improvements, implied that there should be a determination of the actual cost of the improvement, and that the procedure of the treaty of Paris of 1856—that is, the determination by the riparians of the tolls on the river—was, by the silence of the treaty of Berlin, intended to be the method by which the tolls should be fixed.

It is certain that the position of Austria-Hungary at the Cataracts and Iron Gates was a grave menace to lower Danube interests and is unique in river history. At no other place in the globe was a single state allowed to control navigation in an international stream at a point at which it controls only one bank. Furthermore, the freedom of the Danube decreed by the treaty of Paris is thus put at the mercy of a single riparian State. The joint action of all

riparians contemplated by that treaty is set aside and the action of one interested state substituted.¹

The waterways of central Europe are in three groups: (1) The southern group, the Danube and its tributaries; (2) the northwestern group, the Rhine, Ems, and Weser; (3) the northern group, the Elbe and the whole of Germany east of the Elbe, including Bohemia. These three sections of the central European water system are not connected with one another, except for the small Bavarian Ludwig's Canal, between the Main and the Danube, which was opened to traffic in 1845. This canal takes boats with a burden of 127 tons, and its unimportance is shown by the fact that in 1910 its principal port, Nuremberg, had a business of only 27,000 tons.² The needs of the war have increased commerce on this canal, especially through trade. In the first half of 1915, 8,000 tons of foreign wheat passed through it to the Rhine from Ratisbon.³

Previous to the great war there had been several plans to connect these different groups of waterways, but none had been successfully carried through. In 1901 a canal project was approved by the Austrian Government and Parliament under which the Danube was to be connected with the Elbe by way of the Moldau, and by another canal with the Oder and the Vistula, thus linking up the whole of the internal European waterways, so far as was possible on Austrian territory. Work was to be begun in 1904 and the canals were to be finished in 1924, at a cost of 1,041,000,000 crowns (\$239,200,000). The minimum depth of the canals

¹ For discussion of the Iron Gates question, see Sturdza, *op. cit.*, pp. 532, *passim*; and also Baicoianu, *op. cit.*, *passim*; Pitisteano, *La Question du Danube* (Paris, 1914), p. 77, *passim*; and Demorgny, *op. cit.*, p. 307, *passim*.

² Richard Hennig, *Das Mitteleuropäische Binnen Schifffahrtsnetz*, *Geographische Zeitschrift*, 23rd year, pp. 63-64.

³ Kende, *op. cit.*, p. 262.

and improved rivers was to be 6 feet, and they were to carry 600-ton boats. But nothing was accomplished. The difficulty of finding the money, the objection of the Austrian railroad administration that the income of the State railroads would be seriously cut down, opposition on the part of many interests, particularly the agrarians, who feared the competition of cheap Russian and Roumanian wheat; a jealousy between the different parts of the Empire as to which canal should first be begun, proved obstacles that could not be overcome.¹ In Bavaria the question of an improvement in the Ludwig Canal was also being vigorously agitated, but no definite result had been accomplished at the breaking out of the World War.²

The experience of the war brought to the German and Austrian statesmen, business men, and economists the importance of having a water route not subject to naval attack, to the food and raw material-producing lands of the Balkans and Black Sea. The demand upon the railroads for military purposes was enormous, and the great need for other means of transport throughout the countries of the quadruple alliance aroused the patriotism as well as the interest of the people.

A great connecting water route from the Empire to the Black Sea, through which thousand-ton boats could pass without discharging, would greatly facilitate the transfer of munitions to Turkey and Asia, and returning would bring food supplies and raw materials to Germany and Austria. If it be correct that a hundredth part of the existing German-Austrian waterways fleet could on one trip provision 20 army corps for a month,³ the military advan-

¹ Kende, *op. cit.*, pp. 218, 219; E. Rogocz, *Projects eines Grossschiffahrtsweges Nordsee-Schwartze Meer*, in Petermann's *Mitteilungen*, November, 1916, p. 408.

² Hennig, *op. cit.*, pp. 66, 67.

³ Hennig, *op. cit.*, p. 70.

tages of such a waterway are striking. Impeding frosts come in winter when campaigns are not wont to be very active, and a wise use of railroad material will tide over the season of low water. No less an expert than Marshal Von Moltke said in 1875: "Since in any particular military situation there can not be too much transport material, from the military standpoint the care and development of waterways in connection with railroads is to be strongly approved."¹ The author who quoted him, speaking of the great European water system, says that no doubt can exist that these waterways are, from a military point of view, very desirable and advantageous.²

Another object in view in linking up the Danube with the German waterways was the importance of the connection for the Mittel-Europa plan. If a waterway with cheap freights could be constructed through Mittel Europa one-third as long as the seaway from the Black to the North Sea, the raw materials and foodstuffs of the Black Sea and Asia Minor would find their way into the German and Austrian industrial towns and the competition of England or Belgium by the sea route for the trade of the near east would be lessened. The close commercial life which was to aid the political union of the middle European States would be greatly developed and in addition great markets in the Balkans and Turkey could be secured for the manufacturers of Germany, while the products of southeastern agriculture and mines would feed the people and supply the workshops on the Rhine and Oder. Ratisbon would again be the connecting point between east and west, between the German and the Turkish Empires.³ Says a German writer: "The

¹ Hennig, *op. cit.*, p. 75.

² *Ibid.*, p. 75.

³ Kende, *op. cit.*, p. 237.

commercial union, Berlin-Bagdad, with the improvement of southeast Europe and Asia Minor, would create a trade down the Danube of manufactured goods in exchange for cotton, wheat, minerals, and petroleum coming upstream." Another author writes: "I consider it possible to draw the trade of the Black Sea and also of Asia Minor to the water route of the Danube and its canal system . . . especially the trade with heavy goods." "This waterway from Haider (opposite Constantinople) and the Black Sea ports via Galatz to Vienna and Ratisbon, not the much advertised railroad route, Berlin-Bagdad, can even in normal peace times become the commercial-political backbone of a commercial empire of Mittel Europa and Asia Minor."¹

Ambitious plans were laid to connect these great water systems. The chief route was the Main-Danube Canal, which with necessary improvements on the Main and Danube would allow 1,000-ton boats to pass from the Rhine manufacturing cities and coal mines to the Balkans without unloading. A connecting line was planned by way of the Werra, a tributary of the Weser, to bring Bremen into direct relation with the Danube. This canal would be wholly German.²

Two plans were proposed for the Elbe-Danube Canal. One would join the Danube to the Moldau by the Austrian Canal, then by a deepened Moldau connect with the Elbe in Bohemia. The high watershed over which such a system would have to pass, necessitating 100 locks, is, from the point of view of cost and operation, a serious objection,³ so another plan is suggested—to carry a canal along the March from the Danube. This route is much longer, but

¹ See Zoepfi, cited in Kende, *op. cit.*, p. 237, and other citations.

² Kende, *op. cit.*, p. 261, *passim*.

³ German Trades and the War, Department of Commerce, Misc., vol. 65, 1918, p. 103.

the gradient is less, only 50 locks would be required, and it will open directly into the Elbe. A branch of this same March Canal would extend to the Oder and another to the Vistula,¹ thus opening up a direct route for 1,000-ton boats between Hamburg and Soulina and providing a through waterway from the Silesian and Bohemian manufacturing districts and the Silesian coal fields to the Danube lands.²

The principal difficulty with the plan is its very great cost.³ To connect the Rhine and lower Danube with a 6-foot waterway accommodating 1,000-ton boats was estimated at about 2,000,000,000 marks (\$250,000,000); the Main-Danube Canal at 650,000,000 marks; the Weser connection at 350,000,000; and 300,000,000 to 400,000,000 will be needed to improve the channel on the Danube. These estimates were all considered low, in view of probable costs after the war, so that the figure of 2,000,000,000 marks was taken as a more reasonable guess. The Moldau-Danube Canal was estimated in 1901 in the Austrian project at 275,000,000 crowns; the March Canal to the Oder and Vistula, with the connection to the Elbe, was then put at 676,000,000 crowns.

Another objection is the ice, which closes the upper Danube every winter and which will make necessary expensive winter harbors and the tying up of transportation during a part of the winter.⁴ The added cost, therefore, of these winter harbors and of the increase in harbor accommodations to care for the expected increase in traffic, both on the southern Danube and in the Central Empires, must be added to the enormous cost of the river regulation and canal building.

¹ Kende, *op. cit.*, p. 265

² For the Canals, see Kende, *op. cit.*; *German Trade and the War*; Rogocz, *op. cit.*, p. 408.

³ Kende, *op. cit.*, p. 238.

⁴ Kende, *op. cit.*, pp. 256-257.

Since the Mitteleuropa plan is shattered, so that its "commercial backbone" is no longer important, since military necessity ceases to be a dominant motive, the artificial stimuli of the canal system have disappeared, and it must depend upon its economic value. The most important question which will then have to be considered, after that of raising the capital, will be competition with the sea route. Before the war sea freight was so much less than river freight and conditions of transport were so much better that there was no important through transport to the upper Danube,¹ and unless sea freights remain permanently very high the competitive power of the middle European waterway would seem to be very small. In 1918 there was little through freight from Roumania reaching Vienna or Budapest, less arriving at Ratisbon.²

Furthermore, the trade of the Balkan lands is so small in comparison with that of other parts of the world that; from a purely commercial point of view, so great an expense would scarcely be justified. Tables given by a German writer show this strikingly:³

IMPORTATIONS OF THE DANUBE LANDS FROM GERMANY IN COMPARISON
WITH THEIR TOTAL IMPORTS IN THE YEAR 1911

[In millions of marks]

	Total imports.	Imported from Germany.	Percentage of total import.
Austra-Hungary	2,783.9	917.8	33
Roumania	327.8	91.4	30
Serbia	92.3	21.3	23
Bulgaria	161.0	23.9	15

¹ *Ibid.*, p. 248, *passim* and citations.

² *Die Zeit*, May 12, 1918.

³ Edwards, *op. cit.*, p. 482.

TOTAL IMPORTATION OF THE IMPORTANT GERMAN MARKETS IN COMPARISON
WITH THEIR IMPORT FROM GERMANY IN THE YEAR 1911

[In millions of marks]

	Total imports.	Imported from Germany.	Percentage (above) of total imports
Australia	1,326.3	79.7	6
British India	2,086.3	99.5	5
Canada	1,940.6	42.9	2
Union	6,414.3	639.8	10
Russia	2,509.3	625.4	25
Argentina	1,485.6	255.9	18
Brazil	1,080.4	152.0	15
Chile	534.0	85.4	17

To increase the purchasing power of the Balkan and the Turkish Provinces would require development of mines, irrigation, and other agricultural improvements, meaning a large capital investment, which Germany will scarcely be in a position to supply for many years.

CHAPTER V

NAVIGATION AND COMMERCE ON THE RIVER BEFORE 1914

NAVIGATION on the river may be divided into two general classes: (1) The maritime navigation extending to Braila, and (2) navigation by river craft between ports on the river. Before the war in the former navigation, the English ships led, with the Greeks coming next and Austria-Hungary third. In 1911 the total number of English ships leaving the river was 535, with a total tonnage of 1,182,767. The total number of Greek ships was 364, with a total tonnage of 643,191. Two hundred Austrian ships sailed from the mouths of the river, with a total tonnage of 402,656. From this number are excepted the steamers belonging to regular lines, which would increase the Austrian and Roumanian navigation very materially. These vessels carry principally grain to Belgian, Dutch and English ports and bring in iron, coal, and manufactured products, largely for railroads and bridges, from Belgium, England, and France.¹

From Braila to the Iron Gates the transportation consists in large part of the grain brought down in tow-boats from Roumanian, Bulgarian, and Serbian ports to the sea ports, where it is loaded on the seagoing vessels. Goods bound for upriver ports in these three States are transferred to these barges at the river ports. Navigation on this stretch of the river was free to boats of all flags, and as a

¹Demorgny, *op. cit.*, p. 135.

result was carried on by a large number of vessels belonging to owners of the different nationalities.¹ The Greek interest in this navigation was the largest. This interest, therefore, on the lower Danube, both in maritime and river navigation was very important.

Above the Iron Gates the navigation was principally in the hands of the great Danube navigation companies and there were no boats operated above the Serbian boundary by owners who were not citizens of one of the riparian States. In other words, while the navigation on the lower Danube was open to all flags, that on the Austrian and German stretches of the river was closed to all but riparians and was principally in the hands of Austrian and Hungarian corporations.²

The Austrian company was founded in 1830 and received a subvention by the State for surrendering its rights to exclusive navigation. It carried on a regular service for passengers and goods from Ratisbon to Soulina. A Rus-

¹ Baicoianu, *op. cit.*, p. 165.

² Kende, *Die Donaustrasse*, p. 221, gives the following table:

Nationalities.	Number of Boats.	Capacity of Boats.
Roumanian.	231	225,670
Greek	257	210,935
Austrian	59	72,880
Italian	28	20,850
English	9	10,350
German	5	6,950
French	12	17,005
Bulgarian	10	12,730
Ottoman	12	9,125
Total	623	586,495

sian company was founded in 1847, and incorporated in 1866 into the Russian Steamship Co. on the Black Sea. It carried on a trade to Belgrade on the river and had a sea service to Odessa.¹ The Roumanian State Co. was founded in 1890, and, by an agreement with the South German Danube Steamship Co., extended its service to Ratisbon.² The Hungarian River and Sea Steamship Co. was created in 1896 by the combination of several small companies.³

	Passenger Boats.		Freight Steamers.		Freight Boats.	
	Num-ber.	Horse-power.	Num-ber.	Horse-power.	Num-ber.	Horse-power.
Imperial Austrian Steamship Company . . .	49	23,030	90	64,430	858	476,692
Hungarian River and Sea Navigation Co. . .	17	7,180	37	15,160	306	166,256
South German Danube Co. . .	..	..	11	6,260	113	76,121
Serbian Navigation Co. . .	6	2,635	5	1,945	45	21,296
Russian Navigation Co. . .	..	..	12	8,410	120	48,000
Different shipowners on the lower Danube . . . . .	..	..	86	40,000	590	548,675

The Roumanian Danube Co. had 4 elevators, 66 towboats, and 4 tugs (Baicoianu, *op. cit.*, p. 162).

The Roumanian State Co had 11 tugs, 13 passenger steamers, 108 towboats with a tonnage of 80,000 tons, and 14 oil-tank boats (*ibid.*).

The Bavarian Lloyd, at the end of 1915, had 1 tug and 2 motor barges, 27 iron goods barges, and 7 tankboats. It was planned to have in operation by the middle of August, 1915, 4 tugs, 42 goods boats (700 tons capacity), 2 motor tank boats (600 tons capacity); and 10 motor tank boats (700 tons capacity).

¹ Baicoianu, *op. cit.*, p. 161.

² *Ibid.*, p. 162.

³ Kende, *op. cit.*, p. 228. This company received an annual subvention of \$24,360 from the Hungarian Government and was guaranteed a 5 per cent dividend (Baicoianu, *op. cit.*, p. 163).

The Bavarian Lloyd was founded in 1913 by a combination of great German banks, principally the Deutsche Bank. The iron and oil industry was also interested in this company, which increased its fleet during the war.¹ The Deutsche Bank, which had great oil interests in Roumania before the war, got control of this company during the war, expecting to make it an important factor in Danube trade. This interest in the development of oil transport by river, with the improvement of the German Danubian port of Ratisbon (Regensburg) is significant as an evidence that Germany planned to get its oil from the Roumanian and Black Sea fields.

The German and Austro-Hungarian companies during the war planned increases in their fleets. The Austrian Steamship Co. was to raise its capital from 66,000,000 crowns to 76,000,000 crowns to provide for repairs and new steamers.² The capital of the Hungarian River & Sea Steamship Co. was to be increased from \$5,075,000 to \$6,090,000, which the Hungarian Government was to take. During the war there was a considerable development of oil transport on the Danube and the number of tank boats very appreciably increased.⁴ The plans for utilization of the waterway to the Balkans and the Near East evidence its importance to the Central empires during the war, and their determination to develop it when peace came.

The river as far as the Iron Gates, the Roumanian port

¹ The Deutsche Bank controlled the Bagdad Railway, and is the great German bank for the Near East. It evidently intended to develop its transport organization in the Danube and Black Sea very extensively. See *Neue Freie Presse*, Vienna, Jan. 8, 1918.

² *Neue Freie Presse*, May 3, 1918.

³ *Neue Freie Presse*, Jan. 8, 1918.

⁴ Kende, *op cit.*, p. 233.

of Turnu-Severin, is in fairly good navigable condition.¹ Beyond this point difficulties for large boats are great, both in the Iron Gates and higher up the river in Austrian and German territory. There are two causes for these difficulties—(1) low water in the river and (2) need for regulation in the river bed itself. As a result of these two factors boats of 650 tons are about the largest practical size, and they must frequently be only partly loaded in order to navigate at all in shallow water. It is sometimes necessary to lighter them en route.² It is a striking commentary on the difficulties of this navigation that in 1916 the bulk of the petroleum shipments into Germany went by way of the river to Orsowa and then were forwarded by railroad to the central powers.³ Reference has already been made to the grain shipments by boat to Hungarian ports, then by rail to Germany and Austria during the war. Time was, of course, an important element, but it is significant that no attempt was made to carry the grain in barges by water up the river at a time when railroad material was in such great demand in the Central Empires.

The number of vessels entering Roumanian ports on the Danube in river navigation in 1910 is interesting.⁴

Roumanian	11,556
Austrian	9,033
Bulgarian	1,310
Greek	2,560
Russian	3,020
Hungarian	4,720

¹ *Ibid.*, p. 244. Roumania up to 1914 had spent on it in port and river improvements 70,000,000 francs, most of which was raised by a merchandise port tax of one-half per cent (Baicoianu, *op. cit.*, p. 172, Sturdza, *Recueil*, *op. cit.*, pp. 915, *passim*).

² Baicoianu, *op. cit.*, pp. 194-196; Getz, *Die Verkehrswege der Welt*, p. 754.

³ Kende, *op. cit.*, p. 233.

⁴ *Annuaire Statistique de la Roumanie*, 1912, p. 371.

The vessels clearing were in about the same proportion. More Austro-Hungarian vessels than Roumanian trafficked in Roumanian ports. The fact that the great Roumanian navigation on the river was between Roumanian ports is shown by the fact that from 33,979 vessels leaving Roumanian ports 28,702 were bound for other Roumanian ports.¹

Similar figures show the movement in Bulgarian ports:²

Austro-Hungarian	
Ships	8,232
Tonnage	1,501,678
Russian:	
Ships	1,766
Tonnage	127,147
Roumanian	
Ships	1,280
Tonnage	146,512
Greek	
Ships	243
Tonnage	64,164

The importance of the Danube to the trade of Roumania, Bulgaria, and Serbia is best shown by figures.

Imports into Roumania in the years 1909 and 1910 were:³

	By land.	By mouths of Danube.	By Con- stanza.	Total.
1909	229,922	386,149	226,628	842,064
1910	223,450	882,459	159,625	771,542

¹ *Annuaire Statistique de la Roumanie*, 1912, p. 370.

² *Ibid.*, pp 374-375. The Austro-Hungarian boats shown in this table are probably in many cases the same vessels which touched at Roumanian ports, but from these figures the importance of Austro-Hungarian navigation on the lower river is clear.

³ Baicoianu, *op. cit.*, p. 119.

Exports from Roumania in the years 1909 and 1910 were: ¹

	By land.	By mouths of Danube.	By Con- stanza.	Total.
1909	336,590	3,230,792	720,772	4,294,254
1910	280,626	3,189,530	1,009,121	4,429,328

The interest of the various foreign countries in this trade comes out clearly in the tables of the Roumanian statistical department: ²

States.	Value of importations.		Value of Exportations.	
	1910	1911	1910	1911
	Francs.	Francs.	Francs.	
England	57,775,806	85,594,696	33,505,065	55,980,190
Austria-Hungary.	97,980,077	137,040,415	137,284,180	62,873,702
Belgium	13,983,055	28,113,768	226,241,646	263,467,703
Germany	138,237,277	183,797,449	24,281,808	33,008,209
Italy	21,744,144	28,591,518	68,671,677	49,592,099
Holland	5,818,427	4,806,253	90,110,792	76,907,145
Russia	11,771,107	13,541,937	6,261,849	6,971,017
United States	3,630,264	12,886,617	259,498	248,445

The great bulk of the exportation was in cereals, of which in 1910, took: ³

¹ Baicoianu, *op. cit.*, p. 119.

² Baicoianu, *op. cit.*, p. 122.

³ *Annuaire Statistique de la Roumanie*, 1911, p. 338.

	<i>Francs</i>
Belgium	210,139,731
Holland	85,864,984
Italy	61,544,962
Great Britain	26,336,231
Germany	10,438,311
Austria-Hungary	17,990,817
France	27,978,259

The figures bring out very strongly the importance of Germany and Austria Hungary in the import trade of the Kingdom and the huge balance of trade in their favor, while Belgium, the heaviest buyer of Roumanian goods, exported to that country a comparatively small amount.

The Bulgarian statistics show the total amount of imports and exports through Danube customs houses. They do not segregate the amounts which pass down the river through the jurisdiction of the European commission. The total Bulgarian import through Danube customs houses in 1911 was 46,110,984 francs from a total import of 199,344,808 francs.¹ The total export from these ports was 53,719,294 francs out of a total export of 184,633,945 francs.²

The figures for the Danube ports are about equal for those of the single Black Sea port of Varna in the same years.

The totals of the imports and exports for the principal countries are: ³

Imports in 1911:

Austria-Hungary	48,215,666
England	30,034,398
Belgium	5,047,317
Germany	39,836,757

¹ *Statistique Annuaire, Bulgaria*, 1911, p. 311.

² *Ibid.*, p. 312.

³ *Statistique Annuaire, Bulgaria*, 1911, pp 310, 312-313.

Exports in 1911:

Austria-Hungary	10,567,214
England	24,236,537
Belgium	53,789,592
Germany	22,911,569

The Serbian figures are very unsatisfactory as to Danube business. The total export and import up and down the river by the Royal Serbian Steamship Co. in 1908 are, however, given in the *Annuaire Statistique* of 1913:

Export in 100 kg. (220.46 pounds) .

Up river	525,332
Down river	547,043

Import in 100 kg.

From up river	275,474
From down river	320,946

In 1908 Serbia imported from:

	<i>Francs worth of goods</i>
Austria-Hungary	32,151,945
Germany	21,361,374

In 1899 she imported from:

Austria-Hungary	27,426,711
Germany	4,792,254

so that Austro-Hungarian imports did not up to 1908 increase in proportion to the total trade, but German imports showed a very great improvement.

The export in 1908 to:

	<i>Francs worth of goods</i>
Austria-Hungary	21,501,402
Germany	14,018,977

a total of about 35,500,000 of francs out of 77,000,000.¹

¹ *Annuaire Statistique for Serbia*, pp. 509,510.

The export figures show considerable fluctuation, as in 1907 Germany took 32,925,623 francs worth of goods and in 1906, 19,053,882 francs. The imports from Germany were in those years less than the exports to that country. In 1899 Austria-Hungary took 54,748,842 francs worth of Serbian goods, while Germany took 5,922,349. The Austro-Hungarian import from Serbia remained about the same till 1905, when it fell off by a half. German trade, however, showed a steady increase particularly from 1906.

CHAPTER VI

THE WORLD WAR AND THE PEACE

THE Danube played an important part in the great war. An Austro-Hungarian monitor fired the first shots of the war during the first bombardment of Belgrade;¹ Russian and Roumanian monitors harassed the advancing armies of Mackensen in the Dobrudja² and held the mouths of the river till Roumania fell.³ The Austrian monitors were active during the Serbian campaign, especially protecting the crossing of their army in 1915 for the fatal second campaign, in which it overran the country. To hold them in check the Serbians mined the river all along their border, especially the Iron Gates, where the Russians and Serbians also sank lighters in the canal and erected batteries to more effectively block passage.⁴

The Russians made use of the river, as long as the Iron Gates were controlled, to send military supplies by boat to Serbia from their lower Danube ports.⁵ Austria protested

¹ *New York Times. Current History of the War*, vol. x, p. 1074, "His Majesty's Monitors."

² *The Times* (London), Jan. 13, 19, 24, 1917.

³ *Ibid.*

⁴ *Near East*, Dec. 30, 1914, Roumanian and Bulgarian letters, vol. viii.

⁵ *Ibid.*, and Jan. 15, 1915, vol. ix, p. 66. Interesting questions might have come up had Austrian monitors succeeded in entering the lower river while the Russians were transporting munitions through the Roumanian and Bulgarian waters. The river being free for ships of all nationalities, with no distinction made between war and peace, there was no legal right in any state to stop the passage of the Russian boats,

against this as a breach of the neutrality of Roumania and Bulgaria and warned that if it continued, "the imperial monitors would know what to do."¹ The Serbian "Iron Ring" was not broken till the defeat of Serbia,² when the mines were quickly removed,³ and Austro-Hungarian monitors ran down into Bulgarian ports on the lower river, entirely oblivious of Article LII of the treaty of 1878, which prohibited warships on the river below the Iron Gates. Austria-Hungary even asked Roumania to allow her monitors to steam through that part of the river of which Roumania owned both banks, to attack the Russians, but the Roumanians refused.⁴ Once Austria controlled the river and held all the Serbian ports, no more Russian supplies, of course, could be sent to Serbia by the Danube. The Austrians, on their side, brought down military supplies to their prospective ally, Bulgaria, even sending mine layers to Rustchuck in preparation for the possibility of war on the lower river.⁵

The monitors remained in Bulgarian waters, spying on the Roumanian shore and threatening Roumanian shipping⁶ until Roumania entered the war; then they sailed out from Rustchuck, bombarded the Roumanian shore batteries and sank Roumanian ships in the harbors and on the river as

while Article LII of the treaty of Berlin expressly prohibited warships on the river below the Iron Gates, and, furthermore, to allow operations of war, such as the capture in their waters of Russian merchant ships by Austrian monitors, would have been a clear breach of neutrality on the part of Roumania and Bulgaria.

¹ *Die Donau und Meerengen Frage*, p. 127.

² *New York Times*, *op. cit.*, vol. x, p. 1074.

³ *Near East*, vol. x, N. S., p. 183, Dec. 17, 1915.

⁴ *Ibid.*

⁵ *Ibid.*, Apr. 7, 1916, p. 623; vol. xi, p. 490, Sept. 22, 1916.

⁶ *Ibid.*, Mar. 16, 1916, p. 649.

they went up to Hungary. Two of them shared in the defeat of the Roumanian advance over the river, shelling the hard-pressed army as it tried to recross back to its own shore.¹

Soon after the declaration of war the Roumanians seized Orsowa, the lowest Hungarian port on the river, and closed the Iron Gates again, with mines and batteries, to Austrian ships, but the victories of the German armies forced them to retire from the river and the Austrian flotilla descended to aid Mackensen's crossing of the river and to keep the Russian and Roumanian monitors and torpedo boats out of harm's way.²

The Roumanians on their side mined the river to keep away the enemy ships³ and their warships were active in shelling towns and forts on the banks held by the enemy, but as their army was forced to fall back, shore batteries drove them down the river where they kept up the fight all during the desperate winter of 1916-17.⁴

The most important event on the Danube during the war was, however, the use of the river to transport grain and fodder from Roumania in the fateful spring and summer of 1916. In the beginning of the war Roumania had prohibited export of grain with the result that 750,000 tons of German and Austrian owned cereals were held in her ports, but in the spring of 1916 with the Dardanelles closed and little hope that it could be opened, with ruin staring her farmers in the face if their great stores of grain could not be sold to the Central Powers, and with the added temptation of very high prices offered, she changed her policy.

¹ *New York Times*, *op. cit.*

² *New York Times*, *op. cit.*; *London Times*, Nov. 27, 1916.

³ *Near East*, vol. x, N. S., p. 183.

⁴ *The Times* (London), December, 1916-January, 1917.

The need in Germany and Austria-Hungary was great and it was pressing. The crops of 1915 had not been a success and the food supply for men and beasts was running low. The German high command organized promptly a transport service by the Danube, which by the end of September, 1916 had carried nearly 1,500,000 tons of grain and fodder into the territory of the Central Powers. During the same period only one-half as much was brought in from Roumania by rail.¹ The Danube route was through the Iron Gates to Hungarian ports, especially Orsova, then by rail to Austria and Germany. The upper river was not used, a testimony to the difficulty of its navigation, as railway material was at a premium in the Central Empires. The technical skill of the German military engineers so improved the Iron Gates transport that instead of 8 boats a day 18, and even 30 were passed up the river.² The importance of the supplies thus received in tiding over a serious situation until the harvest of 1916 was available, strikingly illustrated to Germans and Austrians the value of an open Danube, though the river itself was only used as far as the lower Hungarian ports. Had the Serbian "Iron Ring" at the Iron Gates still throttled Danube transport, the food supply of the Central Powers would have been in a serious condition in 1916.³

Except for the short interregnum caused by the Roumanian war the river has remained open for oil and grain transport ever since the Serbian defeat, and thus its great importance as a supply route as well as a means of transport of wounded men and munitions was borne in upon all the nations.

The active naval operations on the river, with the mines

¹ *Die Donau und die Meerengen Frage*, p. 131.

² *Ibid.*, pp. 131, 137.

³ See *Jahrbuch des Schiffbautechnischen Gesellschaft*, 1917, vol. xviii, ch. ii.

which were their consequence, all clear breaches of the treaty of Berlin, illustrate the difficulty in the way of attempts by treaty to prevent strong States from using any force at their disposal to beat the enemy, and emphasize the impossibility of preventing naval activity on a river forming a military line unless military activity on each side of and across that river is also prevented. It is clear, furthermore, that the neutralization of the Danube would greatly help the Central powers, since it would allow uninterrupted transport of precious supplies up and down and would strengthen appreciably the upper riparian States and close an effective means of war against them from the lower Danube powers.

The European commission continued to sit until the Roumanian war broke out. Lord Robert Cecil on March 7, 1916, said in reply to a question in Parliament that it still met and that business had been as harmoniously conducted as possible under the circumstances.¹ Its income, however, was cut off by the closing of the Dardanelles, and thus, with the shortage of coal, most of which prior to the war came by ship from western Europe, it was unable to continue its work, especially its dredging.²

Previous to Roumania's entrance into the war, a conference of the riparian powers, with the exception of Serbia and Russia, was held at Budapest at the instigation of the central powers. The conference strongly approved the principle of free navigation on the Danube but recommended control of the river by the riparian states through a commission of their representatives. The commission was to be as nearly as possible a replica of the Rhine Central Commission, therefore, only a supervisory organ, and the close control of the governments was evident in the provision that the commission should draft a navigation police regu-

¹ *Near East*, vol. x, p. 521.

² Kende, *op. cit.*, p. 247.

lation as early as possible and lay it before the governments. The unity of control on the river for purposes of navigation was recognized, but vested in the riparian governments and not even in their delegates on the commission. The unity of the river for purposes of improvement was recognized but no joint action was provided for and the various governments were only urged to secure a depth of at least 6 feet and to prevent constructions in the river which should endanger the navigability of the stream. This rule was expressly extended to water powers. Tolls should not be permitted even for the construction of new works in the aid of navigation.¹

The Roumanian War was ended by the peace of Bucharest, May 7, 1918, which materially affected conditions in the river. The territorial changes gave to Austria-Hungary the Roumanian bank of the Iron Gates nearly to Turnu-Severin at the eastern end of the improvement; and by the lease of the Roumanian shore as far as the shipyard at that point gave her the control of the north bank of the river to that port, where lower Danube navigation proper begins. The control of the Iron Gates by Hungary was perpetuated through the recognition of the Hungarian right to collect tolls and make regulations and to carry out improvements, with the aid of the riparian States, in the Cataracts and Iron Gates. The European Commission, as an organ of the great powers, was abolished and its powers and duties given to the commission of the mouths of the Danube, which included representatives of the States riparian to the river and to the European shore of the Black Sea. Germany and Austria-Hungary, the only great powers represented, could easily dominate such a commission. Representatives of Germany, Austria-Hungary, Bul-

¹ Kende, *op. cit.*, pp. 272-273.

garia, Roumania, and Turkey, a group of States again easily dominated by the Central Powers, were to draft a new river convention without any limitations as to their powers, except that Roumania must guarantee free passage to the ships of the other contracting powers through her waters. The old Roumanian port tax on merchandise, from which her Government got the money for the development of her ports and for her river improvements, was abolished. An interesting article allowed each of the powers to keep warships on the river, but here again Germany and Austria-Hungary secured an advantage, as these warships could navigate upstream only to the limit of their national boundary. Consequently German and Austro-Hungarian monitors would be free to navigate in Roumanian or Bulgarian waters, while the ships of the smaller powers would have no right to penetrate into Austro-Hungarian or German territory by the river. Turkey was also given a right to navigate the Danube by warships, but her only territorial ownership was her quarter interest in the Dobrudja, expected to be traded to Bulgaria. The Dobrudja, up to the Danube, was ceded to the allied powers so that the control of the Cernavoda-Constanza Railroad and of Constanza itself, the only sea-port of Roumania, was surrendered. In a statement issued soon after the conclusion of the peace, Kuhlmann, the German representative, said that the Cernavoda-Constanza line was to be leased to a German company for ninety-nine years, and that Bulgaria, the heir to the Dobrudja and Constanza, was to establish a free port in that harbor.¹

Roumania, by the Bessarabian act of union on the 27th of March, 1918, gained the former Russian territory on the Kilia arm, but she did not get the former Russian control on the river since the new Danube mouth commission was established as the authority for the whole delta.

¹ *New York Evening Post*, May 25, 1918.

The representatives of the Entente Powers at Bucharest protested against the treaty provisions regarding the European commission, maintaining that the arrangements consecrated by the treaties of Paris and London can only be changed by the consent of all the signatory powers.

A new class of rivers is introduced by the Treaty of Versailles; rivers "declared international" the Oder, the Elbe, the Danube, the Niemen: Art. 331. They were international before the great war, and remained international without declaration as a result of the reformation of the political map of Europe by the Treaty of Versailles, and they are not the only international rivers, even in Europe, so the only object the draftsman could have had in creating from these streams a new class of international rivers, was to justify the special treatment they were to receive in the treaty. The term is not a happy one, as it does not describe any characteristic of the class, it even omits the Rhine, which is treated practically in the same way and therefore belongs with the others. The peculiarity of this new class, setting it off from other international rivers, is that the principle of control by riparian governments, with the one limited exception of the sea way of the Danube,¹ universally applied to international rivers, is set aside in favor of a commission composed in part of non-riparians. The chief characteristic of the new class is that equal treatment of all flags on the streams and in their harbors is required by the general treaty, thus taking the control of the river out of the hands of the riparian governments. Only one significant exception is made, which looks more like revenge than justice; German vessels are not entitled to carry passengers and goods between the

¹ The Joint Commission of riparians and non-riparians which was created for the Congo at the Congress of Berlin in 1885, never functioned.

ports of any allied or associated power, without special authority from such power, 332. Thus an old theory applied to the Danube, and to the Rhine, of freedom of navigation for all flags, is extended to a larger group of rivers and this time the non-riparian states propose to see that it is effectively applied, by giving to their representative a seat on the administrative commission. A better title would have been "International Rivers of General European Interest" as distinguished from such streams as the Tagus and Douro between Spain and Portugal, the Vistula, intersecting Poland, Danzig, and Germany, and the numerous international rivers in other continents which are left to their riparians.

The treaty contains the accepted solutions of the questions of tolls, it permits only charges "intended to cover equitably the cost" of upkeep and improvements, (333, 335,) and of works, by putting the burden on the respective riparian state to maintain "good conditions of navigation", (336). A new sanction for this duty appears, and it is significant of hope for the future. "If any state neglects to comply with this obligation, any riparian state, or any state represented on the international Commission, if there is one, may appeal to the tribunal instituted for this purpose by the League of Nations", 334. If the tribunal is effective in keeping the riparian governments to their duty of maintaining the channel, it may well be that the somewhat cumbersome device of protecting non-riparian rights of free navigation by non-riparian commissioners can be dispensed with, and the tribunal entrusted also with the enforcement of this right.

The special conditions in the Danube received special treatment. (Art. 346-353). The European Commission "reassumes the powers it possessed before the war" but, for very evident reasons, representatives of Great Britain,

France, Italy and Roumania provisionally constituted the Commission. Germany was not yet admitted to the society of Nations, Austria-Hungary no longer existed, and it would have been absurd to vest in the small and insecure Republic of Austria the vote held by the Monarchy as a great power. Turkey had even before the war lost any claim to a seat except the historical one, and Russia had no recognized government. Eventually when Germany is restored as a European Great Power, the important business interests she had in the lower Danube revived, there will be no valid reason for not restoring her place on the Commission, and clearly Russia, the chief Black Sea power, should also regain her seat. The European Commission as constituted before the war, was an organ of the concert of Europe, the great Powers, with the addition of Roumania, the territorial power and Turkey. If it is to continue in a reorganized Europe, the same principle should be applied, and not a group of the great Powers, but all the great Powers, should constitute the commission, Roumania, of course, retaining her seat. Germany agreed to make to the European Commission "all restitution, reparations and indemnities for damages inflicted on the Commission during the war."

From the limit of the jurisdiction of the European Commission, an International Commission was created to consist of two representatives of German riparian states, one representative of each other riparian state and one representative of each state represented in the European Commission. In addition to the German states, Austria, Czecho-Slovakia, Hungary, the Kingdom of the Serbs, Croats and Slovenes, Roumania and Bulgaria are now riparian, six in all, and at present Great Britain, France, and Italy would be entitled to representatives as members of the European Commission. The International Commission would then consist of eight riparian and three non-riparian members. Thus the theory

of the general European interest is extended to the Danube, with more reason than in the case of the other "declared international" rivers, in view of the difficult situation in its valley caused by the breakup of the old Austro-Hungarian Monarchy, and the policy which had prevailed since the Crimean war. Extra riparian control is further emphasized by Germany's consent to accept a regime for the river to be drawn up by a "conference of the Powers nominated by the Associated and Allied Powers" within the year.

Clearly the Iron Gates difficulty required a new solution, in view of the changed position of Austria-Hungary, so the Austrian mandate was abrogated. Hungarian expenditures were recognized as a reasonable credit, and the International Commission was entrusted with laying down provisions for the settlement of accounts, but the necessary charges, probably meaning tolls, should not be levied by Hungary. Ownership of the works passed to the states on whose territory they were situated.¹ The general provisions for works apply, but the Czecho-Slovak, Serb, Croat and Slovene states and Roumania are expressly granted on the opposite bank and that part of the bed not owned by them, all necessary facilities for the survey, execution and maintenance of work in that part of the river which forms a frontier. This right will not, on principles of justice and good river administration, be refused to the other riparians.

A possible very real European interest is considered in the promise by Germany to apply to any deep draught Rhine-Danube waterway, the rule of equal rates for all, the rates not to exceed a fair charge for cost and upkeep. These will, however, be high enough, it is likely, to make the canal of doubtful value as a competitor of the sea route from the lower river, at least for bulky articles, and the Balkan countries must show a great development before it can pay to dig the canal for high-priced manufactured

articles, which could probably use the rail route in any case.

Compared with the Treaty of Bucharest the Danube provisions accepted at Versailles are not hard, and respond to the changed political situation in the river. The modifications here suggested will not affect them in principle, but will rather conform to the spirit of the treaty. The continuation of the European Commission responds to a peculiar situation which the war has materially changed, but has not entirely done away with. Austria, persistently unfriendly to the interference of the other powers in what she regarded as a matter for riparians, i. e., dominated by her, no longer exists as a threat to Roumania, and Russia, by the loss of Bessarabia ceased to be a riparian. For the protection of the sea way to the river ports against these two powers, the European Commission, especially Great Britain on the commission, is no longer necessary, but two good reasons remain for the preservation of this remnant of the concert of Europe. One is that assurance that the tolls which must be levied on ships of all nations for the use of the channel and works carried out and paid for by the European Commission, will be fair and will be spent exclusively on the maintenance of good navigation conditions, and the other is that either the European Commission or a riparian commission must have supervision of the outlet to the sea of the Danubian states. Until the new International Commission, chiefly riparian, has made its proofs, both Roumania and the peace of Europe will be served by the retention of so proved an agency as the European Commission.

On the Rhine, there is no reason to believe that there will be an increase of non-riparian vessels in the internal trade of the valley, but with the disappearance of the Austro-Hungarian Monarchy, the favored position of the Austrian and Hungarian privileged steamship companies has disappeared and the rich societies fully capable of providing all

the vessels needed for the trade have been dissolved. Furthermore heavy taxation and insecurity of property right will hamper if not prevent the development of the Austrian and Hungarian river fleets, so that the entry of foreign owned vessels under foreign flags, with all the resulting complications, is to be expected. The crews will be drawn from the river peoples, because of the low wages, but they will be covered by the foreign flag. The vessels will ply between ports in different states so that no one local law rather than another can be applied, unless the statute of the river requires that each Danube boat be registered in a Danube port, whatever flag she flies, and be subject to the law of that port as to relation of crew and owner, taxation and other points not necessarily reserved to the law of the flag.

Either some such rule should be applied or a general statute to apply to all vessels on the river, especially as to the law of the master and servant, should be worked out, leaving the fiscal difficulties to be settled between the separate riparian governments and governments whose subjects desire to sail vessels on the river.

From the point of view of the development of the international law of rivers and of international organization, local and European, the Danube will hold the first place among rivers in the interest of students of law and politics.

The provisions of the treaties with Austria, (291-308); Hungary, (275-291); and Bulgaria, (229-235) are identical with those of the Treaty of Versailles except for an express requirement that decisions of the new International Commission should be by a majority vote. In the treaty of the Principal Allied and Associated Powers with Roumania of December 20, 1919, Roumania agrees to apply the principles of equal treatment of all flags, to the Pruth, thus continuing the prior legal situation on that river, but the Joint Commission disappears.

PART II
THE RHINE

CHAPTER I.

GEOGRAPHY

THE Alpine streams which form the upper Rhine rise in the mountains of western Switzerland and unite in a rapid non-navigable stream which ends its tumultuous course in the Lake of Constance. From that broad sheet of water lying in the plain of northern Switzerland, it flows slowly to the Falls of Schaffhausen and continues thence a troubled course to the neighborhood of Basel. On its way, it receives many affluents from the Alps, thus draining in large part, the high mountains of northern Switzerland. Below Basel, it enters the upper Rhine plain through which it flows for a distance of 224 miles to Bingen. Beginning at Bingen, for 79 miles it breaks through a mountain chain and then emerges into the European Coastal Plain through which it runs 231 miles south, then west to the North Sea.¹

Holland is formed by the delta of the Rhine, which crosses that country in several channels, mingling its waters with those of the Meuse. The delta of the Rhine-Meuse system covers Belgium.

From Basel to Bingen the bed of the river is wide. Its gradient changes rapidly above Mannheim, becoming much steeper from Strassburg northward. Issuing from the mountains as an Alpine stream, it pours its waters on the Rhine plain in a broad shallow channel, subject to frequent changes of course, to the building of new islands and sand-bars, so that navigation has been dangerous throughout the

¹ Clapp, *The Navigable Rhine* (Boston, 1911), p. 38.

whole distance of the upper Rhine, and floods a common occurrence. Below Strassburg, and even more so below Mannheim, as the current is slower, the changes were not so sudden but the channel is still wide, interspersed with many islands and lengthened by the winding river. The water-content is increased by the streams of the Black Forest and the important rivers, the Neckar and Main from Germany, the Ill from the Vosges. Below Bingen the Moselle from the French mountains and the Lahn from Central Germany bring the run-off from valleys and low mountains into the river channel, and the coastal plain supplies its quota through the Ruhr and the Lippe.

The water conditions of the Rhine are, therefore, most favorable. It draws a heavy influx of water during winter, spring and early summer from the low mountains and plains of Central Europe. In late summer and early fall the melting snow from the Alps supplies the deficit which then begins to appear from the plains. Consequently navigation is interrupted for lack of water very rarely; in 1912 for only 9 days at Strassburg, 6 at Mannheim, 22 at Mayence, 14 at Coblenz, 22 at Cologne, 20 at Dusseldorf, 16 at Emmerich, the Dutch frontier. The high water in 1912, an average year, caused but little delay and held navigation at Mayence for 6 days, for a much less period at other points on the river.

Interruption of navigation from ice is very rare and occurs at a period when the water is low in the winter and is therefore during the days in which navigation is most apt to be interfered with by low water.

The political changes on the borders of the Rhine have not been so dramatic as in the case of the Danube. From the time when Charlemagne united the Germanic peoples, states or cities belonging to some form of the Germanic Empire have held the banks of the river except for the

Delta where the king of Spain for a time, as successor to the Hapsburgs, and then the Dutch Republic since its creation, have been masters. France in 1684 took Alsace with Strassburg, its chief city, and thus became a Rhine state until 1871 when by the treaty of Frankfort she surrendered the territory, and the new German Empire controlled the whole valley from Switzerland to the Dutch border. The only capitals, on or near the river, are Karlsruhe and Darmstadt, the seats of the government of the German states of Baden and Hesse, and The Hague, that of Holland. Belgium is commercially a Rhine riparian state since Antwerp has long been one of the principal ports where Rhine boats transfer cargo to sea vessels.

Previous to the War of 1914, Austria and Switzerland were border states on the Upper Rhine, Austria, Switzerland and the German states of Bavaria, Wurtemberg and Baden on Lake Constance, Baden and Switzerland on the Rhine to Basel, then both banks belonged to German states, Alsace Lorraine on the left bank, Baden on the right, then Hesse and Bavaria. Prussia held both banks of the river from the Hessian to the Dutch boundary and Holland was the mistress of the delta. The treaty of Versailles restored Alsace to France, otherwise it did not affect bank ownership.

As the Rhine is well supplied with water on which to float vessels, its valley is also rich in products to freight them. The mountains of Switzerland and the Black Forest, the lower mountains through Germany, are covered with well-managed forests, whence rafts of logs are floated down the river. The great coal territory of the Ruhr is cut by the Rhine and intersected by its tributaries. Another large lignite coal basin lies near the port of Cologne and the coal and iron mines of the Rhine Valley and of Westphalia contribute largely to the prosperity of the river. The soil is rich agriculturally.

It is one of the most densely peopled regions in Europe. From Alsace to Holland there is a city of 100,000 inhabitants about every 30 kilometers, either on the banks or near the river. The neighborhood of coal and iron started the great metallurgical industries of the valley whose development has caused the import of great quantities of Spanish and Swedish iron ore. In addition to German, a certain quantity of English coal is consumed in the valley. The exchange of goods from port to port on the river is therefore in large volume.

The river running through a rich plain with a large population and entering the Atlantic Ocean at what has been for centuries its busiest point, where the English Channel connects the North Sea with the Atlantic, was well placed geographically to be the roadway for a heavy overseas traffic. The population, one of the most laborious and enterprising in all Europe, was well fitted to draw the greatest benefit from the river itself as a pathway of commerce, and to create from the abundant resources on its banks the goods necessary to keep the current of trade moving.

This section is based on *Der Rheinstrom*, a publication of the Central Bureau of Meteorology of Baden; Eckert, *Staats und Socialwissenschaftliche Forschungen*, vol. 81; *Die Rheinschiffart in XIX Jahrhundert*; *Travaux du Comité d'Etudes*; *Conditions de la Navigation Rhénane*, pp. 269 ss., Emmanuel de Martonne; *Jahresbericht des Zentral Kommission für die Rheinschiffart*.

CHAPTER II

TO THE CONGRESS OF VIENNA

DURING the Roman period the Rhine valley was the center of an active commerce. Not only were the needs of the prosperous local population reason enough for business enterprise, but through the valley and over the Alps, down the Saone to the Rhone, past the middle-Rhine cities to Marseilles and the Mediterranean, ran the great through routes from Central Europe to Italy and to Rome. The river, however, does not appear to have played as important a part in transportation during this period as the paved roads paralleling it or crossing it to Gaul. By merchant and soldier the land lines were preferred, both because they offered greater safety at the time when the river was the boundary between the empire and the unconquered tribes, and later because the rapid and dangerous channel of the upper, and of the middle river above Bonn made long distance transportation difficult, and impossible at certain seasons, for large boats. An active local navigation, however, was developed between the riparian towns, and on the tributary streams, to provide for local needs and to transport goods to the great centers of commerce and supply, whence they took the road to Italy.

Below Cologne the Romans were never able to continuously hold the east bank; the Batavier controlled the delta, and the consequent risks to navigation, together with the comparatively small interest in trade with seaports, kept a fleet of Roman merchant vessels from being formed upon

the lower river, though Cologne itself was the headquarters of a Roman river squadron. That the Batavier, however, had a considerable merchant fleet and were accustomed to transport on the river, is evident from the statements of Tacitus that one thousand of their boats were used to carry supplies to the Romans operating in Germany.¹ In the fourth century, again, six hundred vessels came up to Cologne, bringing wheat from Britain to feed the troops after a bad harvest in the Rhine region.²

By the rules of the Roman law navigable streams were public and not subject to ownership, even of the state. Navigation upon them was free and the maintenance of the channel and the towpath, the most important work of navigation improvement during the classical period, was a public duty. There is little indication of regular passage tolls being levied, though charges were made for the use of bridges, and there is an indication in Tacitus that foreigners had to pay a special navigation toll on the Rhine.³ There was at Cologne a toll which was probably a bridge or ferry rather than a passage impost.^{4 5}

2. *Period up to the French Revolution*

The chief commercial route of the early middle ages to the Orient from North Europe was along the Danube. Es-

¹ *Annals*, vol. ii, p. 6, quoted in Gotz, *Die Verkehrswege der Welt*, p. 370.

² In general, *ibid.*, p. 370; Falke, *Geschichte des Deutschen Handels* (Leipsic, 1859), pp. 1-24; H. Boos, *Geschichte der Rheinischen Stadtekultur*, 2nd ed., vol. i, p. 355, *passim*; Engelhardt, *Histoire du Droit Fluvial*, pp. 2-16.

³ Tacitus, *Annals*, vol. iv, pp. 64, 65, quoted in Engelhardt, *Histoire du Droit Fluvial*, p. 12.

⁴ Sommerlad, *Die Rheinzölle im Mittelalter*, p. 14.

⁵ In general, Caratheodory, *Les Grands Cours d'Eau*, who gives citation of the laws; Engelhardt, *op. cit.*

pecially after the Crusades had made that highway to the Greek empire well known and Frankish states had been created in the dominions of the Greek empire, its waters bore numerous vessels loaded with products of the East to the European markets, carrying goods from Europe down river in exchange. From the Danube this trade came over to the Rhine by way of the Main and went down river to the riparian cities, whence it was distributed throughout Germany, on to Holland, overseas to England and the North Sea ports. In addition local trade grew with increasing wealth and from the tenth to the thirteenth centuries navigation interests increased rapidly from Strassburg to the mouths of the river. Alsatian wine from Strassburg, Rhine wine from the lower districts on the river, formed an important part of the cargoes which went down stream to supply the banquet tables of Dutchmen and Englishmen.¹

Another merchant route to the Rhine followed the ancient Roman water and land way via the Rhone and Saone, to Strassburg, thence taking ship down the river.² Cologne, the last large German city, carried on an important trade with England; her merchants were guaranteed special rights by King Henry II in the twelfth century. Strassburg was then one of the most important points on the river and the extent of her trade and influence is shown from the freedom from illegal tolls as far as the mouths of the river expressly guaranteed to her boatmen by Charlemagne, in 775.³

After the Christian empire to the east had been enfeebled by the Mussulman advance so that it was no longer able to centralize the trade of the Orient in Constantinople, and after the Italian merchants, in consequence, had developed

¹ Falke, *op. cit.*, p. 107, *passim*.

² Sommerlad, *op. cit.*, p. 30.

³ In general, Falke, *op. cit.*, pp. 81-85; Altmeyer, *Rheinschiffart Strassburgs im 19 Jahrhundert*, p. 8.

a direct trade with Egypt and Asia, the route for oriental wares ceased to be up the Danube, but came through Switzerland, over northern Italy, via Constance, Basel and Strassburg, thus diverting to these cities the business which had formerly gone by way of the Main to Frankfort, Mayence and Cologne, thence down the river and over seas to England and the North Sea ports.¹ After the fall of Constantinople, in the end of the fifteenth century, the Danube route was deserted by through traffic and the commerce between northern Europe and the Orient fell into the hands of the enterprising merchants of northern Italy in whose towns the Rhine merchants established settlements.²

A counter current developed up the river, however, with the discovery of a new route to India by the rounding of the Cape of Good Hope and the development of America. The oriental trade, through the enterprise of the Portuguese sailors and merchants, centered in Lisbon, and the Flemish cities of Bruges and Antwerp became the distributing points for these goods up the Rhine and into Germany.³ Later the Dutch sailors took an active part in the sea trade to the Indies and traffic with the newly discovered America came also into Holland, so that Rotterdam and Amsterdam grew in importance as a source of up-river trade. After the fall of Antwerp and the rise of the Dutch Republic, the enterprising Hollanders drew the whole lower Rhine commerce to themselves, laying heavy tolls on German vessels and finally agreeing with Cologne that no Dutch ship would pass that city on condition that no Cologne ship should go down stream. As Cologne had the right to compel all goods to be unloaded in her harbor, this agreement gave a

¹ Beer, *Allgemeine Geschichte des Welthandels*, vol. i, pp. 235-241; Altmeyer, *op. cit.*, pp. 8, 9.

² Falke, *op. cit.*, pp. 113-114.

³ Beer, *op. cit.*, vol. ii, pp. 116, 421.

monopoly to the Dutch down-river, while it offered to Cologne boatmen the exclusive right to take cargoes up-stream to Mayence, where a similar right compelled their transfer to local boats..¹

The principle that rivers were public passage-ways and therefore free to all existed at a very early period in German law.² "Every water stream is common to travel on and to fish in and a fisherman may use the bank as far as one step from his boat," says the *Sachsenspiegel* (1215 to 1235) which is authority on contemporary law and undoubtedly mirrors a long-existing condition.³

This freedom of navigation was in the course of the centuries frequently recognized in legal documents of the empire and as an international right was expressly declared in treaties affecting the Rhine.⁴ It never seems to have been denied as a legal theory.⁵ In fact, however, it was greatly interfered with in two different ways: first, from the tolls paid to princes, secondly, from the rights of the cities to compel passing boats to unload and offer their goods for sale, *Stapelrecht*, and to transfer cargo to local boats, *Umschlagsrecht*. The best opinion of the jurists was that there was a right of passage for both goods and soldiers across the territory of a foreign state. No distinction is made between rivers and roads though Pufendorf gives as

¹ Beer, *op. cit.*, vol. ii, p. 479; Engelhardt, *op. cit.*, p. 35; Klüber, *Akten des Wiener Congresses in den Jahren 1814 und 1815*, vol. iii, p. 65; Report of Eichhoff to the River Committee of the Vienna Congress, Eckert, *Rheinschiffart in XIX Jahrhundert*.

² Sommerlad, *op. cit.*, p. 8; Falke, *op. cit.*, p. 236.

³ *Sachsenspiegel*, vol. ii, art. xxviii, sec. 4; Schroeder, *Lehrbuch der Deutschen Rechtsgeschichte*, vol. iv, p. 208; Engelhardt, *op. cit.*, p. 19; Caratheodory, *op. cit.*, p. 77.

⁴ Treaty of Munster, art. 85, 1648 in Dumont, *Corps Diplomatique*, vol. vi, p. 455; Treaty of Baden, 1714; Treaty of Ryswick, 1697.

⁵ Engelhardt, *op. cit.*, p. 36, *passim*, for the Westphalian treaties, Munster and Osnabruck.

one reason for allowing passage by rivers, that while rivers may be held as property, yet the use of their waters for drinking, voyaging, etc., is free. As a consequence, Grotius argues that no duty can be taken for the exercise of this common right, except as a fair recompense for the cost of protecting the travelers and for any burden put on the country as a consequence of its exertion. Pufendorf, while agreeing in principle thinks that the neutral is entitled to refuse passage to an army on its way to attack a friend, but is not under a duty to do so, and he would limit the right of transit of merchandise to that actually necessary for the people to which it is bound. As to articles of luxury, he cannot see why the local sovereign should not allow his people' instead of the foreign merchant to get the profit from trading in them. Why is it not fair for him to oblige such goods to pass through his subjects' hands so that they would get the profit from the trade, and he adds naively that there is no other defense for the stapel right. He turns this point to the advantage of the local lord in arguing that if a lord allows foreign merchants to pass, he is making it possible for them to make a profit he could have by a stapel, so why should he not get "some acknowledgment" for his forbearance. He even advances the argument, specious in view of the historical development of the duty of levee upkeep, that a charge may be laid on passing boats to offset the cost of protection from flood. So while he agrees in principle with the great Hollander, he in practice defends the limit on free passage which custom had allowed. Other writers, taking a more realistic viewpoint held that there was no right of free passage by the law of nature, it could only result from a contract.¹

¹ See Grotius, *De Jure Belli et Pacis*, Lib. II, c. II, XII, XIV, Lib. III, c. XVII; Pufendorf, *Law of Nature and of Nations*, bk. III, c. III, V, VI; Ayala *De Jure et Officiu Bellicu*, Lib. I, c. II, III; Zouche *Juris inter Gentes Explicatio*, Sect. 5, 8, 9; *Textor Synopsis Juris Gentium*, c. XVII, 32, c. XXVI, 35, 36, Vattel, Bk. II, c. X.

The tolls were, in the Frankish monarchy, part of the regalian rights of the kings, and were a tax upon, not a denial of, the right of passage. Moreover, the right to take them was frequently granted to feudal lords in their own fiefs, on condition that they keep up the roads or the tow-paths and protect travelers by water or by land. Even Charlemagne, that vigorous ruler, found it necessary, however, to expressly forbid unauthorized tolls. So it is evident that the custom of treating the tolls as a ransom which merchants were obliged to pay for the privilege of passing through the territory of a feudal lord was early in vogue.¹

In the later empire the taking of tolls was still held to be part of the imperial rights² but liberal grants were made to cities and especially to lords temporal and spiritual both to secure votes for an election to the imperial throne or solely as a means of filling an empty treasury. During the frequent periods of disorder in Germany moreover, illegal toll stations were established and flourished at least for a time, though the emperor tried at intervals to abolish them by decrees. Especially numerous were these illegal burdens on navigation during the thirty years war, and the treaties of Westphalia, 1648, which closed them, expressly abolished all tolls established or increased without the consent of the emperor and the empire.³

Though in the quaint words of the *Sachsenspiegel*: "Tolls and protection come in the first place from necessity and not from greed",⁴ the latter element early took precedence over the former. Rhine lords did not pay either

¹ *Capitula*, 805, cited in Eichhorn, *Deutsches Rechtsgeschichte*, vol. i, p. 678; Schroeder, *op. cit.*, vol. iv, p. 191; Engelhardt, *Histoire, op. cit.*, p. 19, Falke, *op. cit.*, p. 236

² Schroeder, *op. cit.*, vol. iv, p. 528.

³ *Der Rheinstrom*, p. 270, *passim*; Heinrich Boos, *op. cit.*, vol. iii, p. 109.

⁴ Sommerlad, *op. cit.*, p. 27.

in money or in votes for the privilege of maintaining the towpaths on the bank or guaranteeing the safety of travelers on the river.¹ Profit was the real object of the impost. Greed or individual interest, however, as it led to the establishment of many toll stations, led also to a certain degree of their regulation. Alarmed at the loss of traffic resulting from the free use of power to grant new tolls by the emperor, the great Rhine princes, in the thirteenth century, compelled their sovereign to promise not to authorize new tolls or to increase old ones without their consent.² This change in the control over tolls from the emperor alone to the emperor and princes, the electors, was in harmony with the general shifting of power within the empire, as the real control fell more and more into the hands of the territorial princes, either as masters in their own lands or as a house of lords, at the expense of the sovereign. Up to 1805, when the empire disappeared, navigation tolls lay in grant from the empire, subject to the recognition of existing rights and the limitations of treaties.³

The nobles showed no more particular or selfish spirit than did the citizens or the boatmen. The same desire to

¹ The tax on travelers for guards on the roads finally disappeared in the Rhine land in 1803, when the Landgrave of Hessen-Darmstadt surrendered his right of protection of travelers to the Frankfort fair, in practice a tribute paid him by the city.—De Gardien, *Histoire Generale des Trantes de Paix*, vol. vii, pp. 294, 373

² *Rheinstrom*, p. 272; Falke, *op. cit.*, p. 141; Schroeder, *op. cit.*, vol. iv, pp. 529, 814.

³ The criticism of the merchants is well expressed in verse:

“The Rhine can count more tolls than miles
And knight and priestling grind us down.
The toll-man’s heavy hand falls first,
Behind him stands the greedy line.
Master of tolls, assayer, scribe,—
Four man deep they tap the wine”

Clapp, *The Navigable Rhine*, p. 6; Schroeder, *op. cit.*, vol. iv, p. 814; *Rheinstrom*, p. 271.

make what profit they could from passing trade which led to the toll abuses of the lords induced the spread of the stapel rights among the cities for the benefit of their merchants and boatmen. These rights also rested on grants of the emperor or of the local prince (by virtue of his market right) and the last of them did not, in fact disappear until 1831. In the late middle ages there were five stapel places: Strassburg, Speyer, Mayence, Cologne, Dordrecht, which were reduced to three: Strassburg, Cologne, Mayence, by the end of the eighteenth century, with many ports enjoying a limited stapel privilege on particular stretches or tributaries of the river. Merchants passing a city, which had the stapel right, were obliged to unload their goods and offer them for sale during a specified time, then by operation of the "umschlag" or transfer right the goods if unsold must be reloaded into local boats to pursue their journey. In practice the hardships of this custom were mitigated by agreements between cities or guilds or by privileges granted by the emperor, and the stapel right became only a tax on passing boats.¹ The rights of the Mayence boatmen on the upper river were secured by agreement in 1681 between the arch-bishop and the city of Strassburg that Strassburg boatmen should not take cargoes up river though they might come down to Mayence with loads. Only during the Frankfort fairs in spring and autumn could Strassburg vessels carry freight up river. This agreement was at first not approved by the French king who came into possession of Strassburg in 1697, but finally he bowed to the inevitable and accepted it in 1751, it having been long in practical effect.² The Basel boatmen

¹ Altmeyer, *op. cit.*, pp. 10, *passim*; Falke, *op. cit.*, p. 140; Engelhardt, *op. cit.*, pp. 32, *passim*.

² Altmeyer, *op. cit.*, p. 10, Engelhardt, *op. cit.*, p. 34, *Rheinstrom*, p. 272.

could, only with the consent of Strassburg, take cargoes up stream, though they could sail past Strassburg going down stream. The Heidelberg and Mannheim vessels were limited to Neckar transportation, and solely during the Frankfort fairs could they navigate the Rhine and Main to Frankfort.

As a result of the transfer right a large quantity of goods was collected in the transfer cities and a prosperous carrying trade created for the members of the local guild. In order to prevent competition among themselves, and to assure prompt service, the guilds and the city administrations fixed the rates of transportation and required ship-owners to load their boats in regular order, so that they could not discriminate, but all shippers must be treated alike. The monopoly was strict, but it was carefully regulated. The transfer right was defended as in the interest of trade. On account of the varying conditions in different parts of the river, pilots who were familiar with particular sections were necessary, so that a single pilot could not be entrusted with the management of a vessel from Strassburg to Holland. Furthermore, boats suitable for one reach of the river were not proper for use in another. A small vessel could navigate from Basel to the sea, but transport in such a vessel would be more expensive than if the goods were unloaded at Mayence and at Cologne into large boats which containing the cargoes of several smaller boats, would carry the whole much more cheaply for the rest of the journey. Large boats coming up from Holland transferring their cargoes into smaller boats at Cologne and again transferring at Mayence, would make, it was claimed, cheaper and quicker transportation than if small vessels suitable for the upper river attempted to take the cargoes from or to the sea. Freights were kept lower by the use of the larger boats where possible, and the monopoly in the large cities

provided a sufficient number of experienced boatmen and carefully examined boats, so that merchants could be assured of prompt, economical and safe transfer of their goods.¹

After the trade began to come up river from Holland, Cologne became the most important transfer port and the Dutch, as their monopoly of the lower river traffic became more pronounced, succeeded in making the agreement with that city that Dutch boats should not pass it, and that no German boats should come down the river, thus assuring to Holland the profitable monopoly of transport on the lower river.² Stapel, long before the end of the eighteenth century, had lost its original significance and implied only a forced transfer of goods, with a corresponding toll for the use of port equipment, a source of revenue for the city.³ The guilds of boatmen persisted in their monopolistic spirit into the nineteenth century, Mayence and Cologne emphatically urging their rights before the Committee on Rivers at the Vienna Conference. The guild at Lindz, in 1786, petitioned their prince to forbid other than Lindzer boatmen loading at their port.⁴

The interests of cities and princes were not always in conflict and their organizations for common purposes are of special interest in a study of river organization. The weakness of the imperial power led to such bold robbery of merchants, both on water and on land, that the Rhine cities united in a league, in 1226, renewed in 1254, which was

Rheinstrom, p. 272, and Argument of the City of Mayence for the continuation of her rights before the River Commission at Vienna, Kluber, *op. cit.*, vol. iii, p. 187

¹ Beer, *op. cit.*, vol. ii, p. 421; Kluber, *op. cit.*, vol. iii, p. 66, Report of the Director-General of the Octroi to the Committee on Navigation.

² Engelhardt, *op. cit.*, p. 33; Eckert, *op. cit.*, p. 4; and Kluber, *op. cit.*, vol. iii, p. 332, Argument of the Mayence Committee.

⁴ Stein, *Die Rheinschiffahrt von Köln bis Mainz*, p. 14.

joined by many great territorial lords, themselves interested in keeping order. The league waged successful war on the robber barons and did much in establishing security of passage; but it was finally dissolved in 1389, in consequence of the hostility of the princes who feared its strength.¹ The guilds of boatmen and the city authorities as well were compelled by the same lack of public control to agree among themselves in matters of river police, the regulation of traffic and the qualifications of boats and boatmen. The Strassburg boatmen, agreed, for example, to mark and watch the shifting channel of the upper Rhine. The desire, however, of each guild to secure a monopoly for its members, so far as possible, interfered with the regulation of navigation by this means.²

More important were the later treaties between the territorial princes. The four Rhine electors, the arch-bishops of Cologne, Mayence and Treves, and the elector Palatine had become the real rulers of the valley, in spite of the existence of the more and more shadowy empire. Their officers alone were in a position to keep the peace, provide protection for lives and property and maintain the towpaths and other works in the channel which the limited engineering knowledge of the day permitted. It was to their interest to improve the conditions of navigation, because of the revenue they derived from passing boats as well as to advance the prosperity of their subjects. So as early as 1354 agreements were made between them to regulate tolls, to assure the protection which merchants paid for and all too rarely received, and to provide jointly for the maintenance of the towpath.

¹Engelhardt, *op. cit.*, pp. 24-25; Boos, *op. cit.*, vol. i, pp. 484, 537, *passim*, vol. ii, pp. 32, 195.

²*Rheinstrom*, pp. 271, 273; Engelhardt, *op. cit.*, p. 27, *passim*, note on p. 13.

These arrangements finally developed into an organized control of the river consecrated by the treaty of 1506, renewed in 1517. The princes would not permit any person to attack another or seize his goods on the Rhine or on its towpath, or to injure or stop him; but they would protect every person upon the Rhine who had paid the toll and would help him if he were attacked. The toll was a sort of burglary insurance as it was agreed that if any loss was suffered the electoral prince in whose territory the injury was done would repay it, a provision common in cases where the protection tax was paid the local lord, either on the land or on the water. The tolls were lowered and fixed and the princes promised not to raise them or to erect new toll stations on the Rhine and they further promised to put in the existing stations honest and intelligent officials who would hasten as much as possible the examination of the cargoes and the fixing of the tolls. It is an interesting evidence of one of the great annoyances of travel on the river that the agreement provides that the toll officials must take oath not to receive any presents or "graft" and that they have no arrangement with merchants or boatmen. They must not unnecessarily retain merchants or boats or compel the opening of bales of goods. Provision was also made for a common organization. Yearly, on St. Jacob's Day, the council of the princes were to meet together at a Rhine town and there discuss all propositions affecting travel upon the Rhine and decide all appeals in regard to Rhine navigation. The council also consulted in regard to police and towpath and channel improvements on the river.¹ This joint management, despite many complaints to the Imperial diets against its injustice, effected useful improvement in the maintenance of the channel and the towpaths and in the

¹ Boos, *op. cit.*, vol. iii, pp. 110-111; Engelhardt, *op. cit.*, pp. 26-27.

port police. Many of its dispositions remained in force in the conventions which succeeded it beginning in 1803.¹

Channel improvements in the river and its tributaries were impossible without the joint action of the many small riparian states and free imperial cities. In addition to the fact that work could not be done successfully in the channel and on the bank independently in the territory of each small state, a legal reason for common action was developed from the application within the empire of the principle of the Roman law that there should be no interference with a stream to the injury of a neighbor either below or across it.² In the interest of navigation, which was under their protection, the emperors in their election capitulations were accustomed to forbid constructions in the river which would interfere with navigation. The treaty of Munster, article 82, consecrates this principle as a rule of international law and it is repeated in the treaties of Ryswick³ and Baden.⁴ Therefore, legal as well as practical reasons impelled the riparians from the fourteenth century to unite to carry out all important improvements. The empire still maintained in theory its general control over navigation, and still issued solemn orders for the improvement of streams, but the weakness of the central power prevented direct action to compel the carrying out of the legislation and in fact the maintenance of the streams depended entirely on the local princes, and for Alsace on the king of France.⁵

The protection of the bank of the river by dykes was not considered a navigation interest. It was held to be a con-

¹ Engelhardt, *op. cit.*, p. 27

² *Digest*, vol. 43, pp. 12-15.

³ Engelhardt, *op. cit.*, p. 43.

⁴ Rousset, *Recueil Historique*, vol. i, p. 7, article vi.

⁵ *Rheinstrom*, p. 274.

cern of the owners of riparian lands to protect them from flood rather than of the navigators, and there was gradually developed an obligation in the riparian land owners to form districts for the maintenance of dykes. The *Sachsenspiegel* lays down the rule that a village which "lies by the water and has a levee which wards it from the flood" must keep up its part of the levee. Villagers must respond to a call for men to repair a breach.¹ These districts were first organized in the lower part of the river where the low banks and the flood danger made them particularly necessary and after a development by neighborhood action, the question became one of sufficient importance to induce the territorial powers to issue regulations organizing the districts and setting standards for their work.² On the upper Rhine the same system of local districts under state control was in effect. The work was done by compulsory service of the inhabitants of the riparian communes, but towards the middle of the 18th century in many of the states the compulsory service was changed into a tax, and the more important works undertaken by the state. In Alsace the tax system had also taken the place of the compulsory labor.³

Thus the principle of organization of the states upon the Rhine for the common carrying out of works and improvements, the common control of river police, was well developed in theory before the French Revolution. But the sacredness of the principle of acquired rights and the lack of effective enforcement of the common right of free navigation kept up so great a number of toll stations and monopolies on the river that navigation and commerce were seriously hampered and the feeling of discontent was on these

¹ *Sachsenspiegel*, bk. ii, art. 56.

² See Frederick the Great's Ordinance of 1767 cited in *Rheinstrom*, p. 274.

³ *Rheinstrom*, pp. 274, 276.

grounds very strong. The serious inconvenience of the tolls to Rhine navigation was not alone the sum paid. The tax was paid on goods as well as on vessels, causing a great loss of time and heavy expense in fixing the character of the cargo and the amount payable at every one of the stations made necessary by the existence of so many small states, each with its own toll system and officials. As there were not less than thirty-two toll stations from Strassburg to Holland at the end of the eighteenth century,¹ it is no wonder that trade often left the river and went by road to escape the annoyance and cost of water transport.² A contemporary writer says of the situation: "One sees rivers and very fine rivers become almost useless to navigation by the tyranny of tolls. The Moselle, the Rhine, the Elbe and many others, groan under this extravagant despotism, a remainder of traditions of barbarism and ignorance as well as for covetousness. Their banks are infested with insolent pirates, under the name of officials, charged to ransom, in the name of the princes whose domain the waters fertilize, the unfortunate merchants who expose themselves to these ruinous excursions."³

The monopolies of the cities and boatmen's corporations were greatly resented by those who did not share them and were the subject of bitter but not effective complaint. Even the powerful king of France had bowed to the ancient rights of the German city of Mayence and had sacrificed to them the interests of his good people of Strassburg, so what practical realization could be hoped for the principle of free navigation so often proclaimed in Rhine treaties and imperial ordinances?⁴

¹ Eckert, *op. cit.*, p. 23; Altmeyer, *op. cit.*, p. 15.

² Engelhardt, *Fleuves Internationaux*, p. 12.

³ *Annales de Linguet*, vol. xi, p. 492, cited in Engelhardt, *op. cit.*, p. 22; see also Eckert, *op. cit.*, pp. 23-24.

⁴ Engelhardt, *op. cit.*, p. 12, *passim*.

The advantages of water transportation, however, in spite of toll and monopoly, kept a considerable commerce on the Rhine up to the end of this period. The average amount of goods annually forwarded from the port of Mayence in the years 1770-1792, before the Revolutionary wars, the French tariffs profoundly disturbed business, amounted to 667,083 hundredweights,¹ and the twenty-four toll stations upon the river existing at the beginning of the nineteenth century brought in a revenue of nearly two millions of florins.²

3. *French Revolution*

The death-blow to this settled system of privilege and particularism came through that great outburst of individualism and freedom, the French Revolution.³ It first fell on the special situation created by the Dutch ownership of both banks of the Scheldt below Antwerp and by the terms of the treaty of Munster⁴ which closed the river and destroyed the commerce of Antwerp. On the eve of the revolution the emperor, Joseph II, as territorial prince of the Low Countries, had tried to break the Dutch hold on the ground of injustice, declaring that he would treat as a cause of war any attempt of the Dutch to stop his ships bound up the river. The sturdy Hollanders stood by their treaty rights, and stopped Austrian ships. The serious situation which ensued was settled by the mediation of the King of France in favor of the Hollanders and their con-

¹ *Rheinschiffart in XIX Jahrhundert*, Eckert, p. 14

² Garden, *op. cit.*, vol. vii, p. 402.

³ Eckert, *op. cit.*, p. 6.

⁴ Art. XIV. The River Scheldt and the Canals of Sas, Zuyn and other arms of the sea opening into it, shall be kept closed on the side of the said Lords, the States.—Treaty between Spain and the United Provinces, Dumont, *Corps Diplomatique*, vol. vi, p. 431; Engelhardt, *op. cit.*, p. 16.

tractual right was confirmed by the treaty of Fontainebleau, November 8, 1785.¹

Mirabeau, in his work "Doutes sur la liberte de l'Escaut" thus trenchantly criticises the Austrian claim: "If to overturn positive treaties, dependence is today placed on the law of nature, why should not all the powers of Europe retake the provinces which have been acquired, ceded or inherited? As the republic of Henry IV, or of the Abbe de Saint Pierre has not yet been established, I maintain without question that the claim of the emperor is unjust and that the other powers should prevent his carrying it out."²

Seven years later France took a contrary view; the revolutionary armies occupied Antwerp on November 19, 1792, and on the 20th a decree of the French executive council was read, declaring the river open on the ground of natural justice. The council said:

"That the course of river is the common and inalienable property of all of the countries watered by them;

"That a nation cannot without injustice claim the right to occupy exclusively the channel of a river and prevent the neighboring peoples who touch the upper banks from enjoying the same advantages;

"That such a right is a remnant of feudal servitude or at least an obvious monopoly which has only been established by force and admitted by weakness;

"That it is in consequence revocable at any moment and in spite of any privileged individuals and the rights of men are forever imprescribable."³

¹ Engelhardt, *Histoire du Droit Fluvial Conventionnel*, p. 47; Gardén, *op. cit.*, vol. v, pp. 51-75. De Martens gives a full account of this dispute in *Causes Celebres du Droit des gens*, vol. iii, p. 338.

² Engelhardt, *Histoire*, p. 50.

³ *Ibid.*, p. 51. The question involved in the Dutch-Imperial dispute was whether an onerous treaty stipulation could be avoided by one party on the ground of injustice.

The treaty of The Hague, between France and Holland, May 10, 1795,¹ confirmed the decree. By Article 18 the navigation of the Rhine, Meuse, Scheldt and of their branches, was declared free for the contracting states or friendly nations.² No general principle of freedom of the navigation of rivers for all is initiated either in the decree or the treaty.³ Navigation and commerce are both reserved to riparians. Only with their consent can others use the stream, and the theory that international rivers are the common property of riparians foreshadows an administration by them in their own interest, not in that of the world. No advance in principle on this point was made over the treaties of Munster, Ryswick and Baden, but the new spirit abroad in the world put the force behind the words which was eventually to sweep away the worst accumulated abuses of the pre-revolutionary period.

The revolution struck another blow at privileged classes by the law of the 14th of July, 1791, abolishing all craft monopolies, thus doing away with the exclusive privilege of the boatmen in Strassburg, and as France extended her domain over the whole west bank to the boundary of Holland, in the other Rhine towns.⁴ In practice, however, the boatmen's organizations for navigation in Mayence and Cologne proved strong enough and appeared to be of sufficient value to the administration to assure their continuance as a monopoly, though in a changed and less objectionable form.⁵

The victories of the republican armies brought Austria and Prussia to terms and an extension of her frontiers to

¹ Garden, *op. cit.*, vol. v, p. 252.

² Engelhardt, *op. cit.*, p. 51.

³ Pradier-Fodere, *Droit International Public*, vol ii, p 284.

⁴ Stein, *op. cit.*, p. 42; Altmeyer, *op. cit.*, p. 16

⁵ Eckert, *op. cit.*, p. 8, *passim*

the Rhine was one of the chief French claims.¹ At the treaty of Campo-Formio, October 17, 1797, which Bonaparte dictated to the Austrians, the emperor agreed to allow France to hold the west bank so far as it was German, that is, to the Dutch frontier, and by a secret provision promised to use his influence with the diet of the empire to secure free navigation of the Rhine for the French republic and the German states on the right bank of the river.² Only riparians were given rights and the words used are no stronger than those of the old treaty of Baden; but the vigorous revolutionary government used them to attack the toll evil, which was the most serious impediment to the freedom of the river.

This new force in the expression appeared at the Congress of the delegates of the empire and of France, held at Rastadt, in 1798, to settle the terms of peace between the empire and the republic. The French representatives, now in possession of the whole left bank, demanded free navigation of the river for riparians and that other peoples should only participate with their consent, a limitation of freedom which had become the definite policy of the republic. They struck straight at the real evil, however, in demanding that existing tolls on goods be abolished, only a uniform passage toll being allowed, so that merchandise be subject on the river solely to customs duties which should be the same on both banks and which should be payable only on unloading. No common administration was planned; the towpaths were to be maintained by the local sovereigns, but the ancient requirement that no works should be constructed on one bank to the injury of the other, was included. Common action of the states was foreshadowed in the uniform passage toll

¹ Peace of Basel between Prussia and France, April 5, 1793, Martens, *N. R. G.*, vol. vi, p. 45, art. v.

² *Ibid.*, vol. vi, p. 420.

and customs duties, but there was no plan for further united action.

The French attempted a long step beyond the immediate situation on the Rhine. Reciting that an immense advantage should result from liberty of navigation, they asked the delegates of the empire to free equally for the two states, the interior rivers of Germany, such as the Danube, and especially the tributaries of the Rhine. This demand threatened the purses of the German princes and involved a difficult financial question, as in many cases the revenues of the tolls were pledged to secure loans, but the deputation of the empire agreed to consider it if France on her side were willing to abolish all stapel rights and the monopoly of boatmen. France was to be mistress of the cities of Cologne, Mayence and Strassburg, the chief stapel places, and the German cities, especially Frankfort, were very anxious to be free from the obligation of transferring cargo at Mayence and again at Cologne to the vessels of the local boatmen's organizations. Here was an opportunity to do away at one stroke with all artificial interferences which made the proclaimed freedom of the Rhine illusory. The French government agreed that the stapel right was "a real vexation", but claimed that if France gave it up, she should have as compensation the freedom of navigation of all German rivers. She finally was prepared to abandon this point in view of the opposition of the delegation and to consent to abolish the stapel and monopoly of transport in exchange for the abolition of tolls, but the opposition of Holland interfered with the settlement. That country claimed that her vessels be allowed to participate in the new freedom on the Rhine but she was not willing to pay the price by giving up her own dues at the mouths of the river and quite naturally the German states objected to that sort of reciprocity.¹

¹ Holland argued that she had agreed to the freedom of the Scheldt at

Another important point in international river law was discussed and practically settled at Rastadt, the question of river boundaries. There was much discussion in the Congress of the exact boundary of the long Rhine frontier between France and the empire. Previously the rule borrowed from the Roman law, which made the middle of the river the boundary, had served in international as in private law; but the experience of the two states, with the Alsace-Baden frontier, had proved its impracticability in the case of a river which constantly changes its course over a wide bed, cutting new and abandoning old channels, so that the middle line was in a different place at different stages of the water and varied with the frequent modifications in the bed of the stream itself. This shifting of the boundary led to great difficulties in local administration and property rights, since the consequence of the shifting of the middle line of the river was to put parts of Alsatian communes from time to time under German, and parts of Baden communes under French, rule. Before the revolution these difficulties had been the subject of negotiation between the governments of France and Baden without satisfactory result. This unsatisfactory condition led to the acceptance of the principle of the *thalweg* or middle of the channel most used by downstream boats, as the boundary. Though not absolutely constant, the center of the *thalweg* is a less variable line than the center of the river, and with the improvements on the banks and beds of

the instance of France, thus creating a formidable competitor to her own merchant cities, so she was astonished that the government of the republic should not insist on securing the same liberty on the upper Rhine to her vessels which she had granted on the Flemish river. If Holland did not have free navigation on the Rhine, she would be forced to receive from the hands of foreigners objects of prime necessity to her and "would be reduced in ten years to absolute powerlessness."—Engelhardt, *Histoire*, p. 59, quoting the Dutch memoir.

streams confining and marking the navigable channel, it tends to become absolutely fixed. It is, furthermore, the same at all stages of the river. Even the thalweg, though more constant than the middle of a stream, is not an invariable line on such rivers as the torrential upper Rhine, so finally by the treaty of 1840, France and Baden agreed that the legal thalweg should be fixed each year in October, when the water was low, the line thus established to remain until changed. To avoid the difficulties in regard to communal limits and private rights, a fixed line was established in the river as the permanent boundary for these purposes.¹

The Congress of Rastadt broke up without result. But the active military operations which followed brought the war soon to a close in the peace of Luneville in 1801 between the Empire and France, which was agreed to by the diet of the German empire on May 9, 1801.² The thalweg of the Rhine became the boundary between France and the Empire from Switzerland to the Dutch border. The princes who thus lost part or all of their territory were to be compensated at the expense of the bishops and the free cities on the right bank. The diet of the empire, however, found it very difficult to satisfy the dispossessed princes, so Russia and France, as friendly mediators, presented a resolution to the assembly on August 18, 1802, in which the question of the Rhine tolls was treated in a short paragraph abolishing them on both banks and forbidding their re-establishment.³ The diet at first was in agreement with the suppression of the tolls;⁴ but the difficulties of finding revenue to pay the debts for which

¹ *Rheinstrom*, pp. 288-290; Engelhardt, *Fleuves*, p. 71, *passim*; Pradier-Fodere, *op. cit.*, vol. ii, pp. 225-226, 230.

² Garden, *op. cit.*, vol. vi, p. 255.

³ *Ibid.*, vol. vii, p. 157.

⁴ *Ibid.*, vol. vii, p. 401.

certain of them were hypothecated and to provide a suitable dotation for the arch-chancellor of the empire, the arch-bishop of Mayence, led to a decision that a toll must be laid with this purely fiscal object.¹ This point settled, it was decided in the interest of navigation that the number of toll stations should not be over fifteen, there were at least twenty-four then existing,² which, as the river from Switzerland to Holland was now common between France and the Empire, should be fixed and administered in common. The revenues, which were to be divided equally between France and Germany, should be applied first to the maintenance of towpaths and bank improvements, in regard to which the administration should come to an agreement with the territorial princes. The balance only of the German share should be devoted to the payment of the subsidies, principally the dotation of the arch-chancellor. The toll should not exceed the existing charges and the interests of local navigation were considered in a requirement that it should be heavier on foreign than on riparian boats. This requirement, however, impliedly recognized universal freedom of navigation even for non-riparians, and was especially aimed, of course, at the Dutch. The arch-chancellor was empowered to represent the empire in making arrangements with France.³

The agreement between the arch-chancellor and France, signed in Paris, August 15, 1804,⁴ is the first convention

¹ The arch-chancellor had lost all of his former territories and the revenue of the diocese of Ratisbon and the other territories allotted him was not sufficient to support his dignity.

² Eckert says there were 32 toll stations, *op. cit.*, p. 22; Garden, *op. cit.*, vol. vii, p. 402.

³ Garden, *op. cit.*, vol. vii, p. 399, *passim*; Neumann, *op. cit.*, vol. ii, p. 55.

⁴ Martens, *R. G.*, vol. viii, p. 261.

creating a truly international organ for river control.¹ It did not include Holland and Switzerland, so that the principle of community of interest of all riparians proclaimed by the French executive council was only in part applied. The Octroi of the Rhine included a passage toll on vessels and a toll on cargoes varying with the kind of goods, its maximum was fixed, and it was to be collected at twelve stations, six on each bank, by joint administration, controlled by the French government and the arch-chancellor for the empire. The director general was appointed jointly, two of the four inspectors by each party, the officials at the toll stations on the French side by that government, those of the German bank by the arch-chancellor. The director-general had supervision of the toll collection, of the tow-paths and police of navigation. Each inspector watched his own district, reported infractions of regulations to the director-general, and could order the proper authorities to make necessary repairs on the towpath. The director-general, aided by one inspector for each bank, i. e., representing each power, was authorized to make the necessary regulations which should be provisionally executory, but which must be referred promptly to the two governments. If one disapproved, then the regulation must become a subject for negotiation between them. Appeals from the decisions of the toll officials, punishing breaches of the convention, were taken to a board composed of the director-general, aided by two inspectors, whose decisions were by majority, and could be appealed to a central commission which assembled annually at Mayence. This commission was composed of the local prefect² representing the French government, a com-

¹ The agreements between the Rhine electors, while international in character, included only German princes, subject to some degree to the imperial authority.

² The prefect is the chief administrative officer in a department or administrative division of France.

missioner appointed by the arch-chancellor and a juriconsult domiciled on one bank of the Rhine chosen by the other two commissioners. This commission determined finally all appeals on questions of payment of the toll and navigation police. Its powers were purely judicial. The administrative or legislative functions of the administration were wholly in the hands of the director-general and the inspectors with appeal in legislative matters directly to the two governments.

The maintenance of the towpath was made a charge on the Octroi revenue, France being obliged to maintain the paths on her side, the arch-chancellor on the German side of the river. Dykes and other improvements were left to the governments or communities which had previously cared for them.

While works in the river bed, under the convention of 1803, remained subject to the riparian states, the domination of the French Empire assured a certain degree of unity of control and of execution, especially in matters in which France was interested. In a treaty between France and Baden, 5 Nov. 1806, certain improvements are urged by France because they are necessary to protect French towns from floods and swift current and also to prevent the river cutting the road used to carry supplies to the Army in Prussia. The need for a recognized general direction took form in a treaty signed 29 April 1813 between the Rhine princes and France creating a mixed commission to which all plans for river improvement must be submitted. France had 5 members, Baden 2, Berg 1, Hesse 1, Nassau 1, and the two French appointed engineers of the Octroi were ex-officio members, so the French control is evident, especially as the appointed members were not engineers but "chosen from among the principal riparian proprietors." France had both technical commissioners and five in ten of

the non-technical. The principle of local sovereignty was, however, recognized in that the work should be carried out after approval, by the state in whose territory it was to be done. The states, besides, had alone the power of initiating projects¹

The French government protected the transportation interests of its cities of Mayence and Cologne. All goods arriving in either port must be transferred to local vessels before pursuing their journey up and down stream and associations of boatmen were authorized in each city, open to all navigators of either bank holding a certificate from the director-general. Members of the association must agree to transport goods in their regular order, at a freight fixed by the director-general half-yearly, at the time of the Frankfort fair, with the advice or representatives of business interests of three German and three French cities. Except for vessels passing these two cities, navigation was free to boatmen of both banks. The preservation of the obligation to unload at Mayence and Cologne was important to France as a means of enforcing her customs laws. The high tariffs brought about great activity in smuggling which was easier to control if at two points all boats must be unloaded, and if, furthermore, each boatman transporting through freight on the river was subject to French control through his membership in one or the other boatmen's associations.²

The empire in accepting the treaty expressed its hope that in the future the special rights reserved to Mayence and Cologne would be done away with.³ It was agreed that in case of war between any of the states situated on the river or between the two empires, tolls should be freely collected and that boats and persons in the toll service should enjoy

¹ *Rhein Urkunden*, vol. i, p. 35.

² Eckert, *op. cit.*, pp. 12, 25.

³ Martens, *R. G.*, vol. viii, p. 295.

all the privileges of neutrality. The officers and treasury of the toll must be safeguarded and a special flag and special uniform were provided for them.

This organization of the Rhine owed its existence to peculiar conditions which have never been encountered on any other stream. The revenues of the octroi were not primarily destined for the riparian states, but were applied for the payment of special indemnities. The prince chiefly interested in those indemnities on the German side was given the control for Germany of the toll collection, which was frankly a revenue-producing measure. It was, therefore, easy to organize a single control for the octroi, since there were practically only two parties interested, the French republic and the arch-chancellor. The French government having retained the monopolies of Mayence and Cologne, it was necessary that a public authority fix rates, and the director-general was the natural choice for this purpose.

The new boatmen's associations were very different from the old guilds, which were composed of local men under local control, strictly pursuing local interests, while the new associations were truly international, open to Germans and Hollanders, as well as to French, open to residents of any Rhine city. Their interests were not bound up with those of any single town, but depended for protection on and were subject to the international authority which controlled the river. In theory, at least, and to some extent in practice, the new institution existed in response to a need of commerce, not for the advancement of the interests of its members or of a single city, as did the guild at the end of the eighteenth century.¹

The boatmen's organizations at Mayence and Cologne were promptly organized through the director-general and

¹ *Memoir of Eichhoff*, Director-General of the Octroi, in Klüber, *op. cit.*, vol. iii, p. 67.

the French prefect of Mayence. Only a limited number were at first admitted and the list could not be increased unless the director-general decided that there was business enough "to nourish everyone". In the Cologne association, there were thirty-four Hollanders out of seventy boat-owners enrolled for the lower Rhine, and both at Mayence and Cologne the local boatmen were in a majority in the association. An unsuccessful protest was made against the admission of Hollanders on the ground that only boatmen of the contracting states should be admitted to the association and the action of the river authorities shows a broad conception of the nature of the association.¹ Though vigorous protests were made against the associations as contrary to the principle of liberty of commerce, the general opinion of those most interested, the merchants of the valley cities, agreed that they were an advantage to commerce as providing a regular regulated service.² Another advantage in their existence was the convenience of fixing and enforcing the freight rates on the river. One of the principal duties of the director-general was this semi-annual determination of the price of the transport.³

Under the octroi convention trade increased rapidly from the low point to which it had been reduced by the revolutionary wars. The vigorous French government improved towpaths and channel. The great improvement in legal organization under the convention over the confusion pre-

¹Eckert, *op. cit.*, pp. 31, 45.

²Eckert, *op. cit.*, p. 48. Free competition, they said, would ruin many individuals and finally destroy the prosperity of the transport trade, thus directly injuring commerce by reducing security of transportation — Kluber, *op. cit.*, vol iii, p. 116.

³Freights from Mayence to Strassburg in the beginning of the century were 10 francs a hundred weight up stream, 8 francs down. Land transport between the same cities cost 25 francs. so that boats had a great advantage over wagons — Eckert, *op. cit.*, p. 50

viously existing made itself felt, so that the river got its share in the the natural recovery in commerce after the long wars. A measure of the increase is afforded by the harbor dues in Mayence which in 1807 produced three-fold their product of 1804. The heavy French tariffs and their customs regulations excluding certain articles, led to the creation of free ports in Cologne and Mayence so that transit goods were not hampered and the prosperity of the cities seemed assured.¹

A sudden end was put to this promise of better times by the strict enforcement of the continental system through which Napoleon hoped to conquer England by threatening the ruin of her commerce. The amount of goods coming up river decreased rapidly. From 1807 to 1809, goods entering Cologne from Holland decreased by nearly one-half; those arriving at Mayence from the middle and lower Rhine by much more than one-half. The business in Cologne harbor fell from 2,798,450 hundredweight in 1807, to 891,639 hundredweight in 1809. Mayence did not lose so heavily as she had more local trade, but her business fell from 1,231,200 hundredweight in 1807, to 711,178 hundredweight in 1809.² The great improvement in general trade resulting from the revolution is evident, when it is considered that these figures in 1809 were in excess of the average for the period 1770-1790.³

The octroi, as a result, did not bring in the hoped-for financial returns. From a total of 2,536,298 francs in 1809, it had fallen in 1809 to 1,829,833 francs⁴. Even the

¹ Eckert, *op. cit.*, p. 52.

² Eckert, *op. cit.*, pp. 55-56. An attempt to revive the old trade from Italy via the Alps and Lake Constance did not much profit Rhine boatmen.—Altmeyer, *op. cit.*, p. 21; Eckert, *op. cit.*, p. 57.

³ Ph. de Saignac, *Le Rhin*.

⁴ Eckert, *op. cit.*, p. 56.

dotation of the prince primate, formerly the arch-chancellor,¹ was not fully paid; so that he gained appreciably when, in 1810, as a result of a new arrangement of Germany, he received Frankfort and Hanau in return for Ratisbon and his share in the Rhine octroi.² The prince primate assumed the payment of the other subventions to German princes which were to have been paid from the octroi, so that France had entire control both of administration and income.³

Article II of the Treaty of July 1806 creating the Confederation of the Rhine, declared non-applicable to the confederated states all laws of the German Empire except the provisions of the recess of 1803 which established the rights of annuitants guaranteed by the Rhine tolls and the Convention regulating Rhine navigation.⁴

During the French rule protests against the privileges of Mayence and Cologne led the government in 1813 to ask the opinion of the Rhine cities in regard to their abolition. The chamber of commerce in Cologne, backed by that of Mayence, protested to the minister and even to the emperor against a change which would ruin the city and destroy the prosperity of the French bank of the Rhine.⁵

Another effect of the continental policy was the annexation of Holland to France by imperial decree of July 9,

¹ Upon the creation of the confederation of the Rhine, the former archbishop of Mayence, arch-chancellor of the Empire, whose see had been transferred to Ratisbon in 1804, was made prince primate of the confederation.

² Treaty of Feb. 16, 1810, Martens, *N. R. G.*, vol. i, p. 241, Garden, *op. cit.*, vol. xiii, p. 137; vol. vii, p. 406.

³ Napoleon transferred the income to this war chest and used part of it as a dotation for three of his marshals—Thiers, *Consulat et Empire*, vol. xii, p. 17.

⁴ *Rhein Urkunden*, vol. i, p. 28.

⁵ Saignac, *op. cit.*, p. 282; Eckert, *op. cit.*, p. 82, who gives text. *Rhein Urkunden*, vol. i, p. 393.

1810,¹ which was promptly followed by the extension of the convention of 1804 to the Rhine on former Dutch territory.² For only a short time, however, was the navigation on the whole river under a single head. Before the end of 1813, the French Army was driven back from the snowfields of Russia, through Germany, over the Rhine and Napoleon was fighting for his empire on French soil, though Mayence still flew the tricolor. The Octroi, then wholly a French governmental institution, was taken over by the allies and confided to the count of Solms-Laubach, to be managed in their name, under the provisions of the convention of 1804. Holland, once more independent, restored her old dues upon the lower river in the same year and reinstated the sea tolls.³

At the peace of Paris, May, 30, 1814, where was settled the fate of the world empire which the energy of the French nation and the genius of Napoleon so nearly made a reality, the revolutionary principle of free navigation was not only adopted, it was advanced. Instead of that freedom for riparians at which the republican government stopped in its declaration and which, as we have seen it, fell far short of the actual administration, the representatives of the allied governments demanded the freedom of the Rhine, "so that it can be interdicted to no one" and engaged the future Congress "with a view to facilitate the communications between Nations and continually to render them less strangers one to another" to extend the same principle to other rivers. The tolls on the Rhine were to be raised by the riparian states which had succeeded to the Rhine territory of the French empire and the confederation of the Rhine, in the

¹ Thiers, *op. cit.*, vol. xii, p. 169.

² Decree of October 21, 1811, Eckert, *op. cit.*, p. 56; vol. i, p. 32.

³ *Ibid.*, p. 79; Engelhardt, *Histoire*, p. 63; *Rhein Urkunden*, vol. i, p. 36.

manner the most impartial "and the most favorable to the commerce of all nations".¹

The terms of the peace of Paris threatened directly the monopoly of the associations of boatmen at Cologne and Mayence and the advantages which those cities and Strassburg drew from their existing rights of compulsory transfer. The three cities promptly set to work to protect their imperilled interests, arguing, strangely enough, that the purpose of the negotiators was solely to abolish unnecessary tolls which injured navigation more by delay than by the "actual cost of the tolls", and that there was no intention to affect "the beneficial institution" of obligatory transfer or its corresponding boatmen's monopolies.²

An active paper battle was waged between the three cities in defense of their rights and Frankfort in defense of free navigation. The existing institutions were defended, not on the ground of legal and ancient right, but with an appreciation that at the coming Congress a mere legal right, however ancient, would have little influence and the institution must stand or fall on the ground of its practical value to trade. The physical condition of the Rhine requiring various kinds of boats for the various stretches; the necessity to commerce of a plentiful supply of vessels at each of the great mercantile centers, so that prompt transport of goods might be assured; the advantage to merchants of a strict control over both boats and boatmen to guarantee them from loss by wreck or knavery, were put forward as reasons for the maintenance of the monopolies and were all vigorously combated by Frankfort.³ Representatives were sent to Vienna by both sides, and the struggle be-

¹ Treaty of Paris, May 30, 1814, article v, Hertslet, *Map of Europe by Treaty*, vol. 1, p. 8.

² Engelhardt, *Histoire*, pp. 64-65.

³ Klüber, *op. cit.*, vol. iii, pp. 331, *passim*.

tween those who would save and those who would destroy these relics of a century-old institution is of great importance in understanding what was in the minds of the plenipotentiaries when they spoke of "freedom of navigation".¹

¹Eckert, *op. cit.*, p. 54.

CHAPTER III

THE CONGRESS OF VIENNA

At the sitting of the Congress on December 10, 1814, Prince Talleyrand asked for the appointment of a commission of eight members, one from each power represented, to study the means of carrying out the dispositions of the treaty of Paris in regard to the Rhine and the Scheldt, and their application to other rivers.¹ The Russian representative, Nesselrode, observed that instead of turning the question over to the eight powers represented in the Congress, it would be more suitable to form a committee of the plenipotentiaries of the courts directly interested and to join with them other powers, like Holland, whose local rights were involved. Consequently, the rivers committee was composed of the Duke of Dalberg for France, Baron von Humboldt for Prussia, Lord Clancarty for England and Count Wessenberg for Austria, Russia, not directly interested, not participating.²

The commission met on February 2, 1815, and following the suggestion of the Congress, invited to take part in their conferences representatives of Holland, Bavaria, Baden, Hesse-Darmstadt and Nassau, as riparians to the Rhine and Scheldt.³ Subsequently, the principle of local

¹ The Prussian representative, Baron Von Humboldt, asked for time to get instructions, and on December 14th he announced that he had no objection to taking part in the work of the commission, having the consent of his court.

² Klüber, *op. cit.*, vol. ii, p. 96, *et seq.*

³ Klüber, *op. cit.*, vol. iii, pp. 11, *passim.*

control was further recognized by confiding to the riparian states on each stream and each tributary of the Rhine the duty of drafting regulations to put into effect the general principles agreed on by the Congress. The regulations for the Main and Neckar were thus prepared by the riparian states,¹ and to France and Holland was assigned the duty of drafting a special treaty for the Scheldt based on the general principles.²

The Duke of Dalberg laid before the first meeting a draft treaty, which, adopting the principles of the convention of 1804 and of the French declaration of 1792, declared the Rhine to be common, as regards commerce and navigation, between riparian states. According to the next section of his project, navigation on the Rhine should be entirely free and should not be forbidden to any one, evidently abolishing the right of the stapel cities and all boatmen monopolies. The theory of the community of interest was carried out in the organization of a common administration for the river through a commission composed of delegates of the "co-possessors of the banks of the Rhine". A common toll collection was also provided for and the commission authorized to maintain the towpaths and carry out work necessary for the improvement of navigation in the channel, paying for the work out of toll receipts. The central commission was to have no legislative authority other than that of proposing regulations to the states, but it was a substantial administrative organization with definite independent powers. The toll still had its fiscal character, as, though the cost of administration and maintenance of works undertaken by the commission were the first charge against it, the surplus was to be divided among the riparian states. The amount, however, was not left to their individual discretion but must be

¹ *Ibid.*, p. 86.

² *Ibid.*, p. 229.

fixed in common and could only be changed by the consent of all. The toll was to be laid upon vessels and cargoes; but the classification of goods was also to be fixed by the states in common, so that no injustice could be done to the subjects of any particular state.

Baron von Humbolt also warmly approved the convention of 1804 in his memoir laying the basis for the conventional law for all international rivers, in which he frankly declared that the object of the committee was to reconcile the interests of commerce with those of the riparian states. Necessary to liberty of navigation was a common agreement which could be modified only by common consent, but beyond the rules so fixed the states must not be bound, and, furthermore, they must have a share in the tolls in proportion to their bank ownership. The tolls must be fixed in the convention; they must be as independent of the quality of the goods as practicable so that delay should be lessened and for the same reason the number of toll stations must be reduced and precautions taken to prevent customs authorities from undue interference with the navigation. Humbolt took no decided stand on the vexed question of the city and boatmen's monopolies, naming it as one of the problems which the committee must settle. Evidently, he did not believe that the treaty of Paris had finally disposed of the claims of Cologne, now a Prussian city, and Mayence,¹ now belonging to the grand duchy of Hesse. His proposals were not presented as a draft treaty but merely as a statement of general principles.

Plainly there was reason for the encouragement which the Mayence delegates at first felt,² supported as they were by the former director-general of the octroi, Eichhoff, who was treated by the committee as an expert on all Rhine mat-

¹ Klüber, *op. cit.*, vol. iii, pp. 24, *passim*.

² Eckert, *op. cit.*, vol. iii, p. 185.

ters At the second meeting, the question of the monopolies was adjourned till those interested had been heard, and the advice of experts had been taken, so that clearly the words of article five of the Treaty of Paris were not considered as conclusive. The deputies of the cities were heard at the third session. On the part of Frankfort it was declared that forced unloading was an added expense and a hindrance to commerce, that boats could and did perfectly well navigate the river from Holland to Basel and that a monopoly of boatmen was not necessary for police purposes. The Mayence delegates followed with a defense of the economy and convenience of the monopoly, assuring, as it did, to merchants of the whole territory proper supervision over the boats in which their goods were transported and over the manner of handling cargo Eichhoff supported their arguments.¹ Ancient rights were not insisted on. The argument was made on the point whether a controlled monopoly of transportation was preferable to free navigation and at the next meeting Freedom won. Unanimously the commission voted that the right of compulsory transfer enjoyed up to the present by Cologne and Mayence "should be abolished, and should never be restored in a city on the Rhine."² Memoirs were subsequently filed by Mayence and by Eichhoff³ to attempt to change this decision but without success.⁴ Similar rights in regard to the Neckar which had been established at Mannheim in 1808 and had long existed at Heilbronn were abolished by the sub-committee on the Neckar.⁵

At the second meeting of the committee, at which were

¹ Kluber, *op. cit.*, vol. iii, pp. 32, *passim*.

² *Ibid.*, p. 59.

³ *Ibid.*, p. 110.

⁴ Eckert, *op. cit.*, p. 88.

⁵ Kluber, *op. cit.*, vol. iii, pp. 169, 233, 245.

present representatives from all the small states, the French draft came in for sharp criticism. Lord Clancarty for England objected that the provisions in regard to navigation did not follow the treaty of Paris which had been intended to open the navigation of the river to all vessels, and introduced a redraft which stipulated that the Rhine should be entirely free to the commerce and navigation of all nations, so that it could not be forbidden to any one, for these objects, on its whole course. The regulations of navigation should be equal to all and favorable to the commerce of all nations.¹ He evidently considered that the French draft would secure free navigation for riparians only and Dalberg's action in the committee lends strong support to this view. Only Baden, the highest German riparian, seconded Clancarty's effort.²

The committee made short work of the French theory of common ownership. The common toll office was disapproved and the maintenance of towpaths and improvements at the common expense was also defeated. It was agreed that the central authority should be limited to the arrangement: (1) for toll collection by the states; (2) for the maintenance and improvement of the towpath and other works in the river to be carried out by the states; (3) for the settling of disputes between toll collectors and boatmen, and (4) charges against one of the riparian states for not obeying the regulation.

The character of the central commission as a meeting of representatives of states, rather than an administrative body, was finally settled on the fifth meeting when it was also decided that the commission should not be in continuous session but should hold meetings every six months. Each state, furthermore, was to have one member, since in a

¹ *Ibid.*, p. 21.

² *Ibid.*, p. 46.

consultative assembly the equality of states was the accepted rule. The only important function left to the commission as an independent organization was its power to judge cases on appeal.¹

Humbolt in an interesting memoir which was before the committee at the time of the decision in regard to the central commission, distinguished between a commission which would be merely a conference of the agents of the states to discuss river matters and one which would have real authority. In the first case, each state should have equal representation; in the second, representation should be in proportion to the extent of the interests surrendered, that is, in proportion to the extent of riparian ownership. He believed that the river could be managed as a whole only by a commission with real power and proposed therefor a committee of three, in whose election votes of the states should be based on proportion of bank ownership. The commission should meet every six months, to take account of the execution of the convention, to inspect towpaths and channel and to judge appeals from special courts established at each toll station to decide navigation cases. No such control as was vested in the former director-general was given to this administrative commission. The toll officers were to be appointed by the governments who also had charge of the towpaths, but a vigorous sanction was given to the commission's rights of supervision as the governments were obliged to submit to arbitration any dispute over their condition. Under this plan, Prussia, with her long bank ownership, would have had more votes for members of the commission than any other state.²

The plenipotentiary of Baden pointed out the difference between the situation met in 1804 and that existing in 1815.

¹ Klüber, *op. cit.*, vol. iii, pp. 82-83.

² Klüber, *op. cit.*, vol. iii, p. 98.

Then the whole revenue went to France and the arch-chancellor, who had no territory on the river, so that a joint administration of toll and towpath by the two interested parties to the exclusion of the German riparian governments was imposed by the circumstances. Now, he observed, each riparian government had complete control of its own banks and toll collection, so that a common administrative organ was unnecessary.¹

At the sixth session² Humbolt presented his draft³ which was the basis of the final act. The common ownership theory of the French plenipotentiary disappeared; and Lord Clancarty's attempt to secure a definite statement that the navigation of the river was free to all flags, was negatived in a rather ambiguous section. Navigation on the whole course of the Rhine "shall be entirely free and cannot be refused *in respect of commerce* to any one who conforms to the regulations, which shall be uniform for all persons and as favorable as possible to the commerce of all nations." No common toll collection was provided but the total amount which was to be divided in proportion to bank ownership was fixed and could only be changed by common agreement. Each state should collect tolls in its territory for its own account and maintain its own towpath and channel, the tolls serving "principally" for this purpose. Special navigation courts established in each toll station to hear all cases affecting navigation and the special courts of appeal in each state, were state organizations. The central commission had little resemblance to an administrative organ, though it still had the right to hear appeals, which would be made either to it or to the special appeal courts. It was to meet every six months, to be composed of one re-

¹ *Ibid.*, pp. 46, *passim*.

² *Ibid.*, p. 105.

³ *Ibid.*, p. 146.

presentative of each state; its duty was to determine that the regulations were observed and to be a means of communication between the states.¹ The consideration that it decides by a majority does not seriously affect the principle that Humbolt's commission had no real legislative authority, for no decision was binding on any state whose delegates had not voted for it. A substantial though indirect power of enforcement of its provisions was recommended for the commission: The states were to engage themselves to give strict orders to their local authorities to obey the resolutions of the commission unless there was some serious objection. In such case, the local authority was to address its representations to the commission and report to its government which was to take the matter up immediately with the commission.² Forced unloading dues at Mayence and Cologne were abolished and charges for the use of port facilities were to be fixed by the regulations. The other articles of the project were presented at the seventh session.³ They contain the decision to abolish the rights exercised by the boatmen's associations and required that the customs be separate from tolls and that the customs officers should not put any obstacle in the way of navigation.

An attempt was made to regulate navigation in case of war, suggested by Humbolt in his first memorandum as an essential point of consideration.⁴ The riparian governments were to agree to respect liberty of navigation as far as reconcilable to conditions of war, not to interfere with the collection of tolls, to neutralize toll employees and safeguard the collection offices. Lord Clancarty thought the article of little value as boats must be visited and searched for con-

¹ Klüber, *op. cit.*, vol. iii, p. 146.

² *Ibid.*, p. 152.

³ *Ibid.*, p. 209.

⁴ Klüber, *op. cit.*, vol. iii, p. 28.

traband and the section was modified at the conference when Dalberg moved to substitute for it the provisions of the old convention of 1804, simply neutralizing the officials of the toll station and promising non-interference with the toll collection

At the seventh meeting on March 3, 1815, Humbolt, to secure a stronger administration, proposed the appointment of a chief and three assistant inspectors to supervise the observation of the regulations and the execution of the orders of the central commission ¹

Following the idea expressed by him at an earlier session that the votes of the states, when an administrative function was concerned, should be in proportion to their bank ownership, Prussia was to have one-third of the votes in the election of the chief, France, one-sixth, Holland, one-sixth, the other German states, one third. One sub-inspector was to be named by Prussia, one by France and Holland alternatively, the other by the German states. Local officials were to obey the orders of the inspector in regard to matters covered by the regulations, unless they considered that he was acting outside of his jurisdiction, when they were to appeal to their governments.

Lord Clancarty proposed an amendment to Article I by substituting the expression proposed by him in the second meeting providing that the river should be entirely free to the commerce and navigation of all nations, so that in all its course up and down it could not be prohibited for these two purposes to any one ² He observed that Humbolt's clause that navigation for the purpose of commerce must be free did not agree with the peace of Paris which made navigation itself entirely free. The other members of the commission thought that the change should not be made

¹ *Ibid*, p. 220.

² Kluber, *op. cit.*, vol. iii, p. 21.

since Humbolt's draft did not appear to differ from the treaty of Paris, which only sought to free navigation from the limitations which might arise from a conflict between states, and not to give to every subject of a non-riparian state a right of navigation equal to that of riparian subjects, for which there would be no reciprocity.²

Clancarty also proposed to modify Article IV by establishing the principle that tolls should not be considered as a source of direct revenue in place of the expression that they should be principally destined to cover the cost of upkeep. The other members thought this principle went too far and Humbolt having observed that this stipulation was too precise and tied the hands of the powers, Clancarty did not put his amendment to vote.²

At the ninth conference³ Humbolt's administrative organization was adopted,⁴ so that inspectors were provided for in addition to the commission. The lessened importance of the commission in view of the activities of the inspectors, was reflected in the change providing for only one annual meeting and permitting another if the commission desired, and the commission was expressly directed to examine the reports of its inspectors and supervise their work. It was also to busy itself with any improvements of navigation or commerce and to make an annual report, but it had no longer the right to approach the governments directly in case of neglect of towpaths or channel

An important point destined later to cause much trouble was brought up in connection with the number of votes given each state in the choice of the inspector. The Dutch plenipotentiary claimed that his country should have more votes if both the Leck and the Waal were to be treated as

¹ *Ibid.*, p. 171.

² *Ibid.*, p. 224.

³ *Ibid.*, p. 224.

mouths of the Rhine and put under the jurisdiction of the inspector. After discussion, it was agreed that the *Leck* only was to be considered as a continuation of the Rhine, as the Waal was the continuation of the Meuse, and Holland was then satisfied with her one-sixth of the votes.¹

The annuities which under the *reces* of the empire were charged upon the Rhine tolls, were discussed in the commission. It was at first questioned whether France should not pay the whole of these charges, but Baron von Humbolt declared that the treaty of 1810 transferred her share to the domain of Fulda and Hanau. He proposed that the Rhine princes should assume the whole burden.² Article 28 of the final act followed this principle in general by charging the annuities on the Rhine princes in proportion to their share of the toll receipts, and authorizing the Central Commission set up by the treaty to determine whether France should pay a share. By Article 15 of Annex 9, the Germanic Confederation guaranteed the annuities. The same commission was directed to fix the manner of payment and the contribution from each government. The Court of Vienna was requested to appoint a commission of five to determine questions arising as to the rights of claimants.³ The Central Commission took the view which Baron Von Humboldt had expressed at Vienna and declared France absolved from any share in these payments.⁴

The Rhine Treaty as finally drafted became Annex 16 B to the Treaty of Vienna and was to have the same force and validity as if textually inserted in the treaty.⁵ Navi-

¹ Kluber, *op. cit.*, vol. iii, p. 231.

² D'Angeberg, *Congres de Vienne* (Paris, 1864), vol. iii, p. 942.

³ Kluber, vol. iii, p. 270.

⁴ Kluber, *Oeffentliches-recht*, section 867.

⁵ Art. CXVII. Hertslet, *op. cit.*, vol. i, p. 272, for Rhine treaties, *ibid.*, pp. 78, *passim*. *Rhein Urkunden*, vol. i, p. 42.

gation in the whole course of the Rhine was to be entirely free and in respect to commerce could not be refused to any one. The rights of Mayence and Cologne were expressly abolished, as all other similar rights had been abolished in 1804, so that navigation in the future would be free without any obligation to unload or transfer cargo at any place. Another section prohibited any exclusive right of navigation on the river or on any part thereof. These two provisions made evident the meaning which freedom of navigation had for the draftsman of the treaty. The maximum of the toll was fixed and the number of toll houses limited to 12 for the whole river from Strassburg to the Dutch frontier. In Holland and above Strassburg the number of toll houses should be fixed in proportionate distances. Each state controlled its own toll collection. A commission was established to meet at least once a year with a president and secretary designated by lot for each session. The first duty of the commission would be to prepare a definite regulation adopting the principles laid down in this treaty. Each state should name one commissioner but in electing a chief inspector the votes of the states were to be weighted according to bank ownership. In case of war, the tolls were to be collected freely and boats and persons employed for that purpose should be neutralized and the toll houses and treasuries safeguarded.

The treaty made a distinct change from the judiciary system in the Octroi Convention, according to which the toll inspectors decided cases involving breaches of the toll regulation and appeals were allowed to a Special Commission. That judicial system formed part of an administrative system much more independent of the riparian governments than was possible with the new political organization of the Rhine Valley. The sovereigns, jealous of their rights, could not be asked to permit the setting up of courts

independent of their authority, any more than they could be expected to consent to an independent international administration. So for the old system was substituted a mixed organization of special local courts. Each state was to appoint a judge near each toll bureau to decide all disputes arising under the river treaty, the tolls and the regulations. While the judges were officials of the individual states, the treaty provision protected their independence by requiring that they should not lose their places except by condemnation after judicial action. To make the action of the courts as simple as possible for suitors, it was required that their procedure should be uniform for the course of the Rhine and as summary as possible. An appeal could be taken from the decisions of the courts either to a higher court designated by the government in whose territory sat the court of the first instance, or to the Central Commission. Thus a certain control over the decisions of the courts was vested in the common consultative commission and a foreigner thinking himself unfairly treated by the local judge had an international court to assure him justice. To guarantee prompt settlement of cases, the treaty expressly made final the decision of the local appeal court, where it was chosen and thus prevented the usual second appeal to the Supreme Court of the state. The judicial system was treated as a whole in that the decisions of each court were to be executory in all Rhine states and the duty of the judges as something more than mere local officials, was emphasized by the requirement that they take oath to strictly observe the treaty regulations¹.

In addition to the Rhine treaty, the committee proposed a draft of the general principles which should govern interna-

¹ J. B. E. Von Traut, *Zentral Kommission für die Rhein Schiffart*, 1832-1911, Strassburg, 1912, p. 9

tional navigable rivers. Riparian community of interest was recognized in the requirement that all riparian states regulate navigation in common and that there should be liberty of navigation in regard to commerce which, as the discussion of the corresponding article of the Rhine treaty shows, was not intended to prevent a riparian monopoly. The toll and police regulations should be the same, as far as might be, for the whole river and tolls should be so fixed as to encourage commerce, consequently should not be so dependent upon the quality of merchandise as to make necessary a detailed examination of cargoes with the consequent annoyance and delay. . . . Once fixed, the amount of the toll should only be changed by common consent. A mid-way position was taken in regard to forced unloading and other monopolies, another evidence that the committee did not feel itself bound by Article V of the treaty of Paris to assure absolutely free navigation. New privileges or duties based on these privileges should not be established but those already existing might be maintained where they were useful for general trade and navigation, but not where their only reason for existence was a local advantage.

The sovereignty of riparian states was carefully guarded. No administrative authority for the whole river was proposed; the states were only to be bound by regulations to which they had agreed and which they could administer as they pleased and there was also reserved for the states all work on towpaths and channels in their territories. The ancient requirement that no one state should undertake an improvement which would injure another without its consent, appropriate enough as between princes of the Holy Roman Empire, appeared in a form more acceptable to a group of modern free states, that they should, in the regulations governing the river, provide for the way in which

states on opposite banks should share in work done on or in the river. Complete local control over customs was not interfered with, except by the expressed wish that customs authorities must interfere with the navigation as little as possible.¹

The treaty of 1815 profoundly differed from that of 1804, as differed the conditions to meet which the two were drafted. In 1804 there were but two parties interested in the revenue from the tolls, France and the arch-chancellor for himself and as representative of certain German princes; in 1815 each state was to keep its share of the revenue. In 1804, the control of the revenue meant control of the tow-path which must be kept up to earn the revenue and which was at the expense of the tolls. In 1815, each state had resumed its full sovereignty over its own river front. In 1804, French interest chiefly insisted on the navigation monopolies at Cologne and Mayence. But monopoly implied regulation and what organ could better regulate rates and service than the Octroi, interested in navigation on the whole river, rather than in the prosperity of Mayence and Cologne? In 1815, no powerful state pleaded the cause of these cities; the German point of view had become hostile to their claims, so their ancient rights were abolished and no other authority to fix freights or service conditions was established than the then revolutionizing innovation, free competition.² It is interesting to note that we in America have recognized the earlier principle of official control in the public interest. Even the principle of a beneficent monopoly has revived in the provisions of law prohibiting new public-service lines of transport, new lighting plants, without the consent of a Public Utilities Commission.

¹ Treaty of Vienna, June 9, 1815, article cviii-cxvi, Hertzslet, *op. cit.*, vol. i, pp. 208-268.

² Kluber, *op. cit.*, vol. iii, p. 199.

Freedom of navigation for all flags was no more in the thought of the statesmen of the powers at Vienna than in the thought of France and Germany in 1798 and 1804 and British attacks on restrictions of navigation to riparians and against the taking of tolls for revenues were shattered against the wall of local interest. The principle of the French declaration of 1792 and of the convention of 1804, that a river should be under a common management, was partly preserved. A common set of regulations was to be drafted which could be changed only by common consent and a common supervisory authority established, but the administrative power which the strong French empire had assured to the octroi entirely disappeared in the consultative commission of the treaty of 1815.

The Treaty of Vienna required the Rhine states to send delegates to a convention which should meet July 1, 1815, to establish a new law of Rhine navigation according to the terms of the convention. Until the new law was prepared, the convention of 1804, with such changes as were necessitated by the new treaty, was to continue to rule on the river. The Committee met on the 5th of August, 1815, but was not able to take over the provisional administration from the Count of Solms Laubach till the 10th of October 1817. From that date it became the central authority for the river, and the toll officers passed into the service of the local sovereigns where they were stationed. The most important task of the committee was the preparation of a new statute for the river, but many difficulties had to be overcome before an agreement of the states could be accomplished. It was not till 1830 that the differing interests were harmonized and the convention prepared.

The principals in the strife were Prussia and Holland. Prussia had become the possessor of the greatest length of river frontage, including the City of Cologne where was

located one of the great monopolistic associations of boatmen and where boats had to be unloaded, especially Dutch boats coming up the river. Hesse-Darmstadt had acquired the other boatmen's monopoly and forced transfer point at Mayence so that these two states had a very definite advantage to trade with. The use which they, especially Prussia, intended to make was soon evident. In the discussion in Vienna over the extent to which the rights of Rhine navigation through Holland would extend, no definite determination was reached, but the indefinite term "jusqu' à la mer" was used as the limit of Rhine freedom, that is, the Rhine was to be subject to the convention "jusqu' à la mer."

Two questions arose as a result of this indefinite draft. Just within the Dutch frontier, the Rhine divides into the several mouths of its delta. One of them known as the Old Rhine, was a sanded little used stream. The two largest and alone useful for commerce, were the Leck and especially the Waal. Another mouth led to Amsterdam in the Zuider Zee, and by a series of canals, water transportation was possible across the low countries to Antwerp on the Scheldt, now also a Dutch port since Belgium was annexed to the lands of the Dutch crown on the defeat of Napoleon ¹

The Dutch government argued that by "Rhine" was meant in Holland, the stream there known as the Rhine, the Old Rhine, and therefore their right, for the use of the other streams, to levy such tolls as they saw fit, and on such boats or goods as they pleased, remained undisturbed by the Treaty of Vienna. In practice, this meant that they claimed freedom for their navigation and commerce on the river above their border, without giving any substantial rights to their upper riparian neighbors in their own waters. Commerce and navigation up and down the Rhine so far as

¹ Treaty of June 9, 1814, Hertslet, *Map of Europe by Treaty*, vol. i, p. 37.

it concerned the overseas trade by the river was absolutely in the hands of the Hollander, who could favor his own river vessels by levying tolls on their competitors, or could discriminate against goods carried in foreign river vessels or even against goods brought in a foreign ship to a Dutch port, and all possible delta ports were Dutch. This was just what the treaty of Vienna was intended to stop forever on the river, but the words actually used in the treaty, gave to Holland a good ground upon which to base her claim.

Furthermore, navigation on the Rhine should be absolutely free "*jusqu' à la mer*". Did this mean that the conventional freedom ceased where the sea tides flowed or was it intended to assure free passage out to the open sea and world commerce? Holding to the words of the treaty, the Dutch maintained that "*à la mer*" meant what it said, "*to the sea*", and did not interfere with their rights to treat vessels passing through their maritime territory as they saw fit. Consequently they could tax goods brought to Rotterdam or Amsterdam or Antwerp on other than Dutch vessels, and there transferred to Rhine boats, at a higher rate than if they had come under the Dutch flag, or they could levy what dues they pleased on the foreign ships which used their harbors or crossed their sea, and force the whole overseas carrying trade from the Rhine into Dutch bottoms. The government, acting on its interpretation, maintained its right to collect tolls on the basis of the old transit and sea dues, which had been restored when Napoleon was overthrown, and the King of the Netherlands had come back to his own, displacing, as to the river, the tariff based on its Octroi convention, which had prevailed under the French empire.

On the basis of strict interpretation of the treaty the justice of the Dutch position seems clear. Eichoff, probably the best authority and the expert for the Vienna Com-

mission, had no doubt that the expression meant "to", not "into", the sea.¹ Humboldt, who had taken a leading place in the River Convention at Vienna, gave as his opinion during the controversy that there was no doubt that the seaboard state was not bound to permit free navigation to and from the sea. Furthermore, in the discussion in respect to the number of votes to be given the riparian states in the election of Inspectors, Holland's share was estimated on the basis of taking the Leck and not the Waal as a continuation of the Rhine.¹

This situation was unsatisfactory to the other states, especially to Prussia and Hesse. It meant that instead of free commerce with overseas or even free commerce with the Dutch themselves, they were bottled up at the frontier, and their own right to control their stretches of the river, their own ancient monopolies, had been surrendered only to allow a foreign monopoly to succeed against which the treaty tied their hands. The Cologne chamber of commerce urged the Prussian Government to yield nothing until they secured the "freedom of Rhine navigation into the sea, as the sense of the [Vienna] convention requires" They then hoped that, free of special toll, sea ships would come up to their port, and continue it as the point of distribution for the upper river, a position the transfer had assured.²

The Prussian government, backed by Hesse, took up the contest with Holland to secure the removal of the tolls and free navigation into the sea. The existing situation gave her two important cards in the game and she did not

¹ Klüber, *Oeffentliches Recht des Deutschen Bundes*, vol. xviii, 5, p. 105.

² For criticism of the Dutch position, see Calvo, *Droit International*, 5th ed., § 304; Fiore, *Droit International*, 2nd ed. in French (Paris, 1911), vol. ii, p. 64; Phillimore, *International Law* (London, 1879), 3rd ed., vol. i, p. 238; Wheaton Lawrence's *International Law* (London, 1864), 2nd ed., p. 350.

³ Eckert, p. 114.

hesitate to play them. Until the Commission could agree upon a new treaty, the Octroi convention and with it the forced transfers and the boatmen's monopolies continued in effect. The new agreement, however, must evidently abolish these institutions, so it was clearly for Prussia's advantage to delay action until the Netherlands government could be persuaded to agree to her demands in respect to the Dutch tolls. Attempts were made to draft a provisional regulation, but as this would mean giving up her best cards, Prussia refused, and insisted that the final treaty must be agreed to.

England, as a shipping and trading nation, was naturally on the side of Prussia. At the Congress of Verona in 1821 the Duke of Wellington said that Holland, contrary to the act of Vienna, claimed the right to prohibit trade from entering the Rhine and that he was instructed by his government to take the necessary measures with the Dutch government to assure the strict observance of the treaty. The Austrian, Prussian and Russian plenipotentiaries associated themselves with the Duke's protest but the French representative refused to take a position without the advice of his government.¹ In 1826 Austria again protested and claimed that the treaty of Vienna was intended to secure the free navigation of the Rhine and the Austrian government added that Holland had received a concession of territory by the treaty of Vienna by the annexation of Belgium, and that the Dutch government could not claim the benefit of the treaty and refused to accept the burden placed by it upon them.² The English representative at the Congress of Laybach in 1822 entered a protest against the Dutch position.³ Prussia was therefore, assured of strong moral

¹ Calvo, *op. cit.*, 5th ed., § 306.

² Phillimore, *op. cit.*, 3rd ed., vol. i, p. 238.

³ Klüber, *Oeffentliches Recht*, § 57, *ibid.*, p. 784.

support in her diplomatic campaign against the strict interpretation of the treaty.

France and the other German states were more interested in the abolition of the privileges of Cologne and Mayence than they were in the Dutch sea tolls. Frankfort, too, though not a Rhine state, was concerned at the evidence that her victory over Mayence was diplomatic merely and that the Hessian government backed up the ancient privilege of her newly acquired port. For these states the river traffic was more important than the through trade to the sea and their merchants and boatmen were clamorous to be free from the internationally illegal charges of the factors and navigators of the two transfer towns¹. France however had entered into a policy of development of her own merchant marine and her own ports and canals. In 1816 she laid a heavy surtax on overseas goods imported to France except in French ships, so that the import commerce of Strasburg and Alsace must pass through the ports on the Channel and then across the country in the great system of canals which went through all France². Transport to Strassburg through France besides was cheaper and quicker than by way of the river, so both economic policy and economic fact made of little importance to France the opening of the Rhine mouths.³

Nassau, whose territory on the right bank of the Rhine was directly opposite Mayence, was particularly energetic in urging that the monopolies abolished at Vienna by agreement be abolished in fact. The Rhine and the Main formed the boundary between her lands and Hesse, up to the Free City of Frankfort, so the carrying trade of that great en-

¹ Kluber, *op. cit.*, p. 784.

² Altmeyer, p. 22, Act of April 28, 1816; Lyon Caen et Renault, *Traité de Droit Commercial*, 5th ed. vol. i, p. 7.

³ Eckert, pp. 154-155, Clapp, *op. cit.*, p. 10.

trepot was the prize for a fair share in which she was contending. With the aid of Frankfort merchants, her boatmen contrived a practical way of evading the Mainzer. Only boats passing Mayence were subject to the duty of forced transfer, so they arranged a portage by land past Mayence. Cargoes from Frankfurt were unloaded at the Nassau port of Biebrich, above Mayence, carried in wagons through Nassau territory to a Nassau port below that city, and there again loaded on boats to continue their journey by water.

Holland under heavy pressure, gradually showed her willingness to make concessions. The authorities at Amsterdam in 1815, issuing a new regulation of Rhine boatmen remarked that "in the present state of affairs the former laws could not be again put into force absolutely without change." The regulation is interesting as it recognizes the existing monopoly of the boatmen's organization for through routes by reserving for those already established the preference and permits new boatmen to take part only in case of the death of an old captain and the purchase of his boat. Even this was limited for a period until the number of boatmen actually employed was lessened.¹ The decision at Vienna in favor of free navigation was evidently taken with reservation by the riparian governments. An interesting sidelight on navigation of the early 1800's is the prescription that every captain must own and sail his own boats. The monopoly of the small working master, the regular legal form of business organization of the pre-revolutionary time, was still in effect, though it was soon to give place to the short period of free competition before the new economic capitalistic monopoly of the age of steam took its place.

The Dutch Government, bowing "to the present state of affairs" admitted in 1826 that the Leck as well as the

¹ *Rhein Urkunden*, vol. i, p. 37.

almost useless Old Rhine should be considered as part of the conventional Rhine, revoked the existing toll on that stream and substituted a new toll, the same for all boats, based on the Rhine tolls. This concession, however, was only "jusqu'à la mer", the sea dues were untouched. The king expressly declared that he took this step to speed the settlement which should give to those interested the advantage which they had expected from the Vienna Treaty.¹ By the order of March 1, 1828, the convention of 1804 was applied to the Leck after a thirteen years' exile and the tolls sensibly lowered. Special courts were established for Rhine boats, in order to prevent delay and they were permitted to continue their voyage after security had been given. The annoying customs regulations were also much improved. An important regulation permitted Rhine boats, with customs guards or hatches sealed, to pass through Holland from the open sea, without paying any customs duty. The sea tolls, however, were still levied. No special free port for discharge of goods into sea vessels however, was provided. In case of transfer of cargo, Rhine boats were under the general law.² In 1825 the Dutch representative in the Commission had expressed his government as willing to consider also the Waal, the most used channel in the delta, as a continuation of the Rhine, so that tolls only on the scale of the Octroi convention should be levied, on a basis of equality for all flags, to abolish all prohibition of transport across its territory and to reorganize its port and customs regulations so as to reduce the expense and delay of transshipping goods. Prussia still refused to agree to a settlement which left the sea tolls intact. On the other

¹ Ordinance of September 10, 1826, *Rhein Urkunden*, p. 188; Langemans, *Traité des Pays Bas*, vol. II, p. 177; *State Papers*, vol. XIII, p. 1109.

² *State Papers*, vol. XV, p. 1227, Langemans, *op. cit.*, vol. II, p. 181; *Rhein Urkunden*, p. 193.

side both Cologne and Mayence had yielded in part to the clamor against their monopolies. In 1809 the French government had increased the list of goods which could sail past the port of Cologne and in 1818 the city government took further steps to lessen the burden on shipping. Mayence, also, by ordinance abolished abuses to which the boatmen objected.¹

The question finally passed out of the hands of the helpless Commission and became the object of direct negotiation between the Prussian and Dutch Governments. They finally came to an agreement and presented a plan to the Commission in October 1829, which was adopted in November 1830 and ratified by the powers as the Treaty of Mayence, 1831.²

An important change had in the meantime taken place in the political conditions on the mouth of the Rhine through the war for liberation against Holland waged by Belgium. The great powers had intervened and compelled the separation of the two states. At the time of the discussion of the regulations in the Rhine Commission, it was practically certain that Antwerp would no longer be a Dutch port, so that Antwerp was stricken from the list of free ports of Holland in the Treaty and no mention made of it. The representatives of the German states, however, reserved the right to subsequently take up the question of freedom of transit to Antwerp and the use of the port of Antwerp. Holland agreed that she would not object to this being done.³

Meantime, France and Baden, as riparian proprietors, had concluded a treaty to regulate the Rhine between Strasbourg and Basel. The treaty of Vienna was taken as a

¹ Eckert, *op. cit.*, p. 220.

² Klüber, *op. cit.*, p. 862.

³ *State Papers*, vol. xix, p. 88.

basis, the tolls fixed and toll offices set up to take tolls in France for French, in Baden for the Grand Duke's account. The treaty declared navigation "absolutely free", to be denied to no one in respect to commerce. The definition of "absolutely free" however, was the conventional one, free to boatmen with permits from their respective Rhine sovereigns visaed by the Provisional Committee at Mayence.² Switzerland, whose port of Basel lay at the end of this stretch of the river, was still kept out of the conventional Rhine and had no rights to free navigation.

During this interregnum the improvements in the river were exclusively committed to the individual sovereigns. The ancient principle, however, that works in the territory of one state should not injure that of another was respected, and agreements between the states affected, determined what work, interesting both parties should be done. As an instance, the Prussian and Netherland governments declared in the treaty of October 7, 1816, that if a sandbank appears in the river they will agree upon measures to be taken to protect navigation.¹

Commerce on the river increased immediately after the peace and the lifting of the continental blockade, but after 1816, showed no improvement, but in many years a decrease. The heavy tolls both at the mouth of the river and in the conventional Rhine, the delays and expenses in the ports, weighed so heavily against the advantages of the natural pathway, that goods could often be shipped more cheaply via Bremen to Frankfurt or through France to Switzerland and Southern Germany. Nevertheless the income from the toll was important. From 1815-1831 the total gross was 42,967,809 francs of which about 3,000,000

¹ Treaty of August 1, 1820, *Rhein Urkunden*, vol. i, p. 165.

² *Rhein Urkunden*, vol. i, p. 163. See Treaty between Baden and Bavaria, November 24, 1825, *ibid.*, p. 182.

was net to the states entitled.¹ Prussia with the longest bank ownership and that on the lower river with the heaviest traffic had about three-fourths of this income ²

¹ Kluber, *op. cit.*, p. 845.

² *Ibid.*, p. 150. See Clapp, *Navigable Rhine*.

Where authorities are not cited this section is based on the excellent work of Eckert at pp 94-216, Engelhardt, *op. cit.*, pp. 73-77 and Clapp, *The Navigable Rhine*, pp. 1-18.

CHAPTER IV

TREATY OF 1831

NEITHER party admitted that it was wrong in its interpretation of the Treaty of Vienna. The preliminary statement to the Convention of 1831 carefully preserves whatever rights either may have under that act, and bases the new arrangement on mutual concessions. The general right of navigation was expressed in the same words as in the Act of Vienna: navigation was to be free "jusqu' à la mer", to the sea, and could not in respect to commerce be refused to anyone. The essential points demanded by Prussia were, however, admitted. The King of Holland yielded on the question of the mouths of the Rhine, and agreed that the Leck and the Waal were to be considered as the continuation of the Rhine, and therefore the convention and all future agreements should apply to them.¹

Vessels belonging to the Rhine navigation and owned by subjects of the riparian states may sail through to the open sea or from the sea into the river without transferring cargo, and a fixed toll for other cargoes took the place of the former onerous dues. (4) Goods coming down the river in a boat belonging to the Rhine navigation for export from a Dutch port or discharged from a seagoing ship at a Dutch port for transfer to a river boat belonging to the Rhine navigation were likewise subject only to the same fixed toll. (7) Vessels of the Rhine navigation were accorded a positive advantage which mirrors the ambition of

¹ Treaty of Mayence, Hertslet, *op cit*, vol iii, p. 848.

Cologne to be a seaport, since other ships were compelled to pay the regular sea tolls for vessels crossing the sea territory of the Netherlands, Rhine ships were put on the same basis as national ships in this respect. (12) The privileges granted the Rhine navigators were not given without compensation. The upper riparians granted to Dutch boats and their cargoes passing up or down the river to or from Germany, Switzerland, and France, the same freedom from transit dues in other rivers and canals which the treaty of Vienna granted them on the Rhine. (Art 9) Consequently very substantial advantages were gained by each side, and Holland did not surrender her claims for nothing.

Another way of keeping foreigners off the river was incorporated in Art. 42, which set forth that experience and special knowledge were necessary to navigate the Rhine, so only properly accredited masters with licenses from riparian states were to command boats, and the name of his boat must be on each master's license. Licenses could only be given to subjects of Rhine states. Boats so commanded could not be compelled to unload or transfer cargo at any point on the river. Boats also must be examined before their first voyage and annually thereafter. (53)

For the last time the guilds are mentioned, to finally abolish them, and the governments agreed not to fix the number of captains. (Art. 44-5).

The toll system was continued on a basis of mileage so that each state would get a fair share and the rates were higher on the upper than on the lower river where trade was much heavier. The double system was continued, a charge on boats, loaded or unloaded, according to their capacity, and on goods by weight, but for specified bulky articles it was fixed at one quarter or one twentieth of the maximum; and a boat laden with certain local products paid no goods toll, but double the regular boat toll. (14ss)

The tariff was a maximum, so it could not be raised by any one state but it could be lowered by the Central Commission, or by any state for its own toll stations. No general exemption of navigation tolls was permitted but any state might diminish or exempt from toll either specified goods or goods carried belonging to its own subjects within its own territory or that of immediate neighbors. (Art. 32)

Equal treatment in transit, however, would not alone establish equal use of the river. Cargoes were carried only to be unloaded for consumption on land, so that proper facilities and equal treatment in unloading were also covenanted for. Free ports, where goods could be discharged or stored for further transit without paying customs, were to be established in each state, and, to avoid misunderstanding, the list was included in the treaty and maximum port charges were also fixed. Rotterdam and Amsterdam were named as free ports for transshipping overseas. (§10) Of importance at the time when even transit goods had to pay import and export duties at the frontiers of the small states into which Germany was divided, was the freedom from any other payment than the fixed toll, and another gain was the permission for boats to go in transit through the territory of a state with sealed hatches or with a customs guard on board, and without examination by customs officers. (§36ss) Not only expense but delay as well, were thus lessened and a help given Rhine navigation in the competition with other routes.

Thus a certain community of interest was recognized in the navigation of the river. The most objectionable legal obstacles to equal treatment of riparian boatmen and goods in transit were finally abolished, but a large scope was left for the separate action of the governments by law or by treaty, within the limits set by their agreement. The common interest appears also in the regulation of the method

of navigating and loading vessels, certain duties of the master, to remain by his boat at all times, for example, and his relation to shippers. It would clearly make interstate transit very difficult, if, for example, one state permitted deck loads to be carried, the next refused, and the situation would be worse where opposite banks were in different hands. In this respect a common law of the river was provided for in the treaty and thus placed out of the reach of the national legislative authorities. (§56 ss).

No continuous central authority for the river was set up, to succeed the Octroi. Instead a Central Commission, to meet annually, was created on the basis of equality of states. Nassau and Prussia had equal rights. Each state sent one representative and while the commission could decide by majority, such decisions were not binding on the governments whose representatives did not assent. Consequently, the treaty itself or any agreement by all the governments was in the same position as usual treaty provisions, unchangeable, except by the common consent. The commission was to meet at Mayence every July 1, for a month, and, if necessary to finish its business, must reassemble for another month in the fall. Following the rule of equality, the President at each session was to be determined by lot. The Commission, was however, to be an important organ for the expression of the common interest. It was expressly directed to oversee the administration of the regulations, to consider how they should be modified for the benefit of navigation, to suggest improvements in the channel. It was thus a regular meeting of the interested parties with a definite program of work, which could bring to light acts or delays in action against the common rights and provide a place for discussion. It also established a means for keeping alive the sense of a fluvial community, limited, it is true, but real, which had

always existed from the force of facts and which had found expression in the agreement of the Rhine Electors and more effectively, in the Octroi

A certain administrative power was granted the Commission, and here Humbolt's idea of weighting votes was applied. It was to elect a chief inspector, for life, and in the voting power of each state the extent of bank ownership controlled. Prussia had 24 votes, France and Holland 12 each, and the other German states 24, of which Baden had 11, Hesse 6, Bavaria 4, and Nassau 3. The inspector was the guardian of treaty rights, through whom complaints by merchants or navigators were to be investigated and reported. These might refer to arbitrary or illegal acts of the local officials or to hinderances to navigation contrary to the treaty or regulations. He was also, as far as his limited force allowed, to inspect the navigability of the channel and make his investigations the basis of representations. His power was only that of persuasion, not of command. Irregularities in a subordinate state official were to be called to the attention of his superiors and if not satisfied by their action, he could report to the Central Commission, giving notice of his report to the government concerned. The commission could then bring the matter to the attention of the government most effectively by discussion with its representatives on its own body. Thus publicity was looked upon, by these international legislators of the early nineteenth century, as the special sanction of their treaty, and organized publicity was arranged for.

The Inspector was a community official. He was paid from the common purse and took his official oath to the Central Commission. Rather in addition to him than under him were four district inspectors, one each for Holland and Prussia, one for the Middle Rhine states, and one for Baden and France. Each of these inspectors was ap-

pointed and paid by the state or states appointing him. His duty was to keep watch over the administration of the fluvial common law and to see that navigation was not hampered by official acts or by construction in the river. (89 ss)

Toll collection was not a common interest. The community was only concerned in determining its maximum; the actual collection was then a local affair. So the local states named their own toll officials. In case of war, however, the provision of the Octroi Convention was continued and it was settled that belligerency of any state should not interfere with toll collection, but that persons and boats of the service should be neutralized, and guards established for the toll station. (108) Of course, a hostile power occupying the territory could take the net product of the payments belonging to the public revenue. As a sign of their dual nature boats of the service were to fly the flag of their own state, with the word "Rhenus" on it. (107)

Another common interest was in the establishment of a common judicial system. Boats and cargoes might cross several boundaries in the course of a single voyage, would, in long trips, always cross at least one; boats flying all the flags in the valley might be in the same port, or on the same reach of the river, so that disputes, over toll collection, over acts involving civil damages, or criminal responsibility arising from breaches of the common river regulations would frequently involve foreign vessels. If, however, the local judge held the foreign boats in the jurisdiction, detained the master, until the case was settled, it was evident that free navigation would be greatly hampered, but if he let them proceed he would have no means of control to compel appearance, once they had passed the border. This was notably the case where the dispute was over tolls. Yet in fact those boatmen were responsible persons whose living depended on their ability to pass up and down the river,

who were certain to remain on a boat somewhere on the stream, who were licensed or registered in some riparian state, so that in fact, if not in law, they were easy to reach.

To meet the need for a judicial authority with a common jurisdiction, the negotiators of the treaty, following the Treaty of Vienna, directed each government to set up a special Rhine court or courts on the bank of the river near toll stations, which should decide all cases covered by the treaty or the regulations, thus going beyond the Octroi courts which were essentially to decide disputes over tolls. The courts were to be local courts, but their decisions were to be executory in all Rhine states, both in civil and criminal matters. In criminal cases they could only impose a fine; corporal punishment or imprisonment for breaches of the peace which might arise on the river or as a consequence to a breach of the river law, assaults, theft, were left to the ordinary criminal justice, except that where the local law permitted it, a person who did not pay his fine was imprisoned.

A choice of appeal was provided for, either to an appeal court in the state in which sat the court of original jurisdiction or to the Central Commission. The appeal court must be near the river, and so convenient to those interested in navigation. Only one appeal could be taken, so if the appellant chose the higher courts, he must stand by his choice and, could not change to the Commission, or if he selected the Commission, he could not also try his luck with the court. (81 ss)

As no common administrative authority was established and no common revenue provided, the upkeep of towpaths and channel was restored to the territorial sovereigns, who promised to see that a work was done. They also undertook to prevent interference with navigation by mills or other constructions either on the river or on the towpath.

(67) This undertaking involved an important function in the Central Commission whose approval of works in the river as not calculated to interfere with navigation was required

Pilotage, also, was considered pre-eminently a local matter, and the only common interest, that charges should be the same for all

The Mayence treaty was a compromise between the riparian community interest in navigation and state sovereignty. It recognized no general international interest except the right to ship goods by the river, a right assured at Vienna, and as to which there had never been in practice any question. In fact, the desire to attract merchandise to the Rhine was one of the prevailing reasons for the treaty. Instead of trying to keep out foreign, especially overseas goods, the governments in the valley wanted to fill the boats of their subjects with the goods destined for consumption in the interior, and this sentiment increased, in most cases rapidly, after 1831.

Under the Octroi convention the community interest had been foremost and had been provided with a powerful administrative organ. Backed by the overshadowing French empire, and finally practically becoming a part of the administrative system of that efficient government, it had operated successfully, but when a group of states, wholly or practically independent, jealous of their sovereign rights, had succeeded to France and the Confederation of the Rhine, a different system was inevitable. That system suggested by the Vienna conference and put into effect by the treaty of Mayence was a logical expression of existing conditions and it undoubtedly worked better than would an organization less suited to the spirit of the times.

It was essential to the common interest that navigation should be treated as a unit so far as possible, that no legal

hindrance should prevent vessels of one state sailing the waters of another, and that there should be one regulation of navigation for the whole stream, which could not be changed except by community administration. If tolls and harassing customs regulations were to be fixed at the will of each of the seven governments, then any one could practically close the river in its territory, a power which might be used with great effect in trading for advantages with the neighbors, but a power which threatened navigation and the community so seriously, that in the general interest, the governments agreed to forego it. It was, however, not so necessary to limit their action in lowering the tolls, and, as no legislative authority was set up, it was on the whole to the joint advantage to allow them this discretion. They used it, as experience showed, to advance their own particular interest, but on the whole, the community profited by this much freedom of action in the governments. The result might have been otherwise, had not the leading powers recognized the economic advantage of encouraging traffic, and one, at least, sought, as serving her political ends, the commercial unity of the greater part of the valley.

Unity in the administration of justice was not possible but to a certain degree was practicable, by a slight derogation from the principle of sovereignty, so it was established. The community interest in uniform interpretation of the common fluvial law and in safeguarding the rights of the subjects of one state in the courts of another, was strong enough to establish the most marked derogation from sovereignty, the Central Commission as an appeal court. From the treaty expressions it could be argued that sitting as an appeal tribunal, unity would be necessary, thus making decisions subject to the approval of the government from whose courts the appeal was taken, but in practice a majority sufficed. Thus the Commission, sitting in judgment,

was no longer a diplomatic body acting on the diplomatic principle of action by common consent, but was something different, resembling very closely an independent international organ. That its members were not necessarily jurists weakened its position as a court, and increased the probability of arbitration rather than legal settlement, but it was compelled to pass on cases which had gone through a law court, to apply to them the law of the state in which they had been tried, and the common law of the river. The persons before it were not governments, but individuals, and it decided on the rights of individuals, not on those of governments, as in case of true international courts, or of individuals against governments as usually happens where arbitration of claims is established. Had the example of the Octroi convention not been before its eyes, it is not likely that the negotiators of this treaty would have thought of so decided a derogation from sovereignty. In practice the governments have taken thought of the important judicial function of the Commission, and have sent commissioners who have the legal knowledge required.

Except where experience had shown that community action was essential, however, the treaty respected the principle of sovereignty. Even where the community interest was stipulated for, it was treated as a transaction among states, a giving and taking to mutual advantage, not a recognition of absolute rights to be regulated by common accord.

The laws of the various Rhine states carrying out the provision for the licensing of boatmen all made the exclusion of foreigners from the river very evident. In order to get a license the boatman must be a subject of the licensing state and in every case the name of the boat which he was to command was required to be noted in his license. Candidates had to be examined as to their knowledge of the

river and of navigation and a certain experience was required before the license could be applied for.¹ The signatory states themselves on September 2, 1845, by an amendment to the Convention,² regulated the growing steam traffic on the Rhine by requiring a concession from the riparian state of which the concessionaires were subjects and in which the corporation had its seat. A steamer properly authorized could transport goods and passengers from any Rhine port to any other. Each government was to inspect its own steamers and engines and license the captains. The old requirement that a captain must have the name of his boat noted on his license, convenient in the old days of sailing vessels, was troublesome in the case of the new large corporations operating a number of steamers, so that on the first of December, 1848, the Central Commission,³ with the approval of the governments, allowed a captain to command any steamship belonging to his company. The same regulation permitted a navigator to take a sailboat other than that named in his license on a single round trip or to have the names of other boats added to that in his papers. So, while the question of the proper interpretation of the expression "jusqu' à la mer" in the treaty of Vienna was left unsolved, no doubt remained as to what boats and boatmen were entitled to "free navigation."

The governments promptly organized courts to carry out the requirements of the treaty, designating by law existing tribunals and appellate courts whose seats were convenient to the river. The Central Commission, France abstaining, regulated the choice of appeal⁴ to the Central Commission

¹ Law of Bavaria, 28 December, 1833, *Rhein Urkunden*, vol. i, p. 303; Prussian Law, 5 August, 1834; *ibid*, p. 314, for boats Prussian Law, 27 September, 1834, *ibid.*, vol. i, p. 321

² *Ibid*, vol. i, p. 474

³ *Ibid*, vol. i, p. 495

⁴ August 2, 1836, *ibid.*, vol. i, p. 337.

or to an appellate tribunal by providing that where each party has chosen a different appeal court, that selected by the party first in time to make his appeal has priority, but if the appeals were filed at the same time, then the choice of the defendant below should govern. A further regulation of the Central Commission of the 13th of July 1836,¹ laid down the procedure in the case of appeal to the Central Commission. Appeals were to be filed with the chief Inspector who then entered the cases, made up the docket and laid it before the Commission at its next sitting. For each case in the docket the President named a referendar and a co-referendar, each of whom had to make a written report. At their request other commissioners could see the papers. Any commissioner could withdraw from the court and so not take part in the decision, but at least five members must be present. Decision was by a majority, the president having a casting vote, and proxies for this purpose were not allowed. Referendar and co-referendar might join in the decision and if they did were not bound by their previous opinion. The President of the Commission named a member of the court to prepare the opinion which must be read during the session at which the matter was considered. The proceedings, therefore, were wholly written, there was no oral argument. The Commission could send the papers back to the lower court for further proceedings, to be returned to it at its next regular session. If the local court did not return the papers in time the chief inspector must call the commission's attention to the failure and the commission should warn the lower court. If at the next meeting the papers had not been returned to the commission, then the representative of the state in whose territory the local court sat was requested to take action through the Ministry

¹ *Ibid.*, vol. i, p. 366.

of Justice of his state to secure prompt attention to the request of the commission.

The judgments of other Rhine courts were made executory in each state by the statute setting up the court in that state and where, as in France, there was normally a second appeal from the decision of an appeal court, the second appeal was expressly refused to Rhine cases. Consequently as the Rhine courts and the appeal courts must be near the river, the heavy cost and great loss of time occasioned to litigants by traveling to a final court of appeals at a great distance from their homes and from the spot where the action arose was obviated. Furthermore, the litigants could be certain of a judge with some knowledge of the practical points involved, a specialist to some extent in the case of the lower courts, in the questions arising under the breaches of the Rhine treaty. It was also important to Rhine boatmen and merchants shipping goods by the river that the boat by giving security could be promptly released and continue its voyage while the interest of the plaintiff was served through the requirement that the defendant must elect domicile in the city in which the court sat. Thus service of process was made easy and the important consideration of preventing a denial of justice through failure to locate the defendant or through the crossing of the national boundary where process did not run, was conciliated with the importance of permitting a boat to pursue its journey.

Under Article 46 of the Treaty, decisions of the commission are only obligatory on the governments which approve them. If this provision had been applied to judicial decision, much of the value of the central commission as a court would of course have been lost, so that in practice the approval of the governments was not considered necessary to give effect to the decisions of the commission, acting as a court. The commission has no advance information of

the cases to come before it at any meeting, and the cases are as a rule, decided before the session closes, so that the governments cannot advise their representatives in advance as to decisions. In fact the continuance of the court, and the strong support it found in 1867 at the revision of the Act, are the best evidences of its fairness and of its practical value.¹

The treaty gave no right to the Central Commission to require improvements in the bed of the river. This duty was left to the separate states. It is probable that this freedom of action rather worked to the advantage than the disadvantage of navigation. The state which had to make the most expensive corrections on the Rhine was at the same time most interested in the development of navigation and one of the strongest of the riparians, financially and administratively. That state was Prussia, whose government energetically pushed the improvements in the narrow rocky channel above Bonn, keeping up its work with the advances in the size of vessels and the introduction of steam. Had it been necessary for Prussia to obtain even a majority of votes on the Commission to authorize the works which it planned, and had the supervision over their execution been in the hands of an engineering force subject to a Commission, many of whose members represented states hostile to the Prussian government, it is reasonable to question if the work would have been done either so well or so quickly. Had the work been put in charge of the Central Commission, furthermore, the funds for its execution would have necessarily been raised either from the Rhine tolls or from grants of all the riparian states. Had the carrying-out of the projects depended upon the first sources of revenue, nothing could have been done, since the Rhine commerce was in no position to be burdened by the heavy cost of the

¹Traut, *op. cit.*, pp. 25-6.

improvements at a time when it was competing so actively with land ways in the valley and those radiating from German and French sea ports. The difficulty of raising a sufficient sum from the riparian states for work to be done in the territory of one of them, work in which they were not directly interested, would probably have proven insurmountable. A plan to allocate expense according to advantage would have been very difficult to prepare, and in view of the change in Rhine commerce to the disadvantage of the territory above Mannheim, after 1844, would have required changes again depending on the agreement of all the governments. It would evidently have been impossible to compel any riparian state to itself pay the expense of work in its territory carried out by order of and under the supervision of the Central Commission.

There was spent upon the river in the period 1831-1870 a total of about \$32,000,000, the greater part of which was spent on the improvement of the Prussian Rhine above Bonn.¹ This sum was not wholly for the benefit of the boatmen, but partly to straighten the bed of the river, so that the current was not thrown against the banks, and as the dykes built protected the land from floods as well as deepened the channel, the farmers and burghers profited also from Rhine works. Thus another element in the difficulty of permitting a Central Commission to control the improvement of the river is evident for an almost impossible task would have been the apportionment against the states benefited of a fair sum for protection against floods.

Conditions, however, made agreements between the states necessary. France and Baden in 1840 on the 5th of April² agreed that the engineers of the two states should form a mixed commission to decide on improvements. The Com-

¹ Eckert, p. 331.

² *Rhein Urkunden*, vol i, p. 390.

mission should meet successively in Karlsruhe and Strassburg. It had power to fix the general lines of the correction of the river and the governments were not to authorize works outside these lines, but its decisions in respect to work to be done must finally be approved by the governments.¹ It was more difficult to settle differences in this respect between the small states. The Rhine boundary between Hesse and Nassau was formed by a broadening of the river which required the construction of a definite channel and expensive works to maintain depth in that channel. All the Rhine states finally took a hand in this matter and by the Treaty of the 29th of November 1856² signed by all the governments, the work to be done was designated and the part of each riparian set forth. Each state was to keep up the works in its own territory after completion. If difficulties arose between the governments during the work they were to be settled by an arbitration commission composed of persons nominated by the governments of Prussia acting for Hesse, Baden for Nassau and France for the other riparian governments, a majority of the arbitrators to decide.

The Central Commission nevertheless was not without any rights in respect to works affecting navigability. The states agreed that the works undertaken by them should not interfere with navigation and therefore the approval of the Commission was to be sought in cases where such a danger was to be apprehended. This was particularly the case where two states planned a new bridge over the river low enough to make it necessary for sailing vessels or steamers to lower their masts or funnels when passing. These bridges became frequent with the development of railways and the commission, before expressing its opinion that there

¹ See further Treaty between same states, 1857, *ibid.*, vol. i, p. 547.

² *Ibid.*, vol. i, p. 542, Langemans, *op. cit.*, vol. iv, p. 295.

would be no damage done to navigation, required the states to pay a fixed sum to every Rhine boat, calculated as the cost of installation which would enable it to lower masts or funnels, plus the loss of time, and the increase of expense resulting from the change.¹

The seat of the commission was moved from Mayence, whose former importance as the transfer point for the upper river had been lost, to its successful rival Mannheim by the agreement of April 3, 1860.² A reason for this change was that the presence of a French Commissioner, in the city of Mayence, had become objectionable. Mayence was the principal fortress of the German Empire, of which the head of the House of Hapsburg was Emperor, and the political relations between France and Austria were not cordial.³ Furthermore Mannheim had become practically the head of navigation, since the Baden railways had destroyed river transportation to Strassburg and Basel.

The shifting current of the Upper Rhine made the ordinary standard, the middle of the river or even the middle of the thalweg, hard to apply on the boundary between France and Baden. A commission created by the second Paris Peace of 1815 met in 1817 and it did not finally settle on a treaty till the 30th of January 1837, which was found impossible to carry out and was abandoned in the year 1838. A new treaty was made on the 5th of April 1840 which distinguished between the political boundary and the boundary for rights of property. Two lines were provided for, one fixing the rights of sovereignty, the middle of the thalweg, the other dividing the property rights over the islands and banks in the river. The political boundary fixed jurisdiction over civil and criminal matters

¹ *Rhein Urkunden*, vol. i, pp. 553, 578; vol. ii, pp. 9 and 20.

² *Ibid.*, p. 585.

Traut, *Zentral Commission*.

and the power of the public authorities. The property or ban border line ran between the properties of public domains, the border communes and the public corporations of the two states and was not allowed to cut through these public properties. It was fixed in the treaty. It was agreed that the thalweg was to be the best way by low water for down-river navigation and should follow the deepest part of this channel. It should also be movable and fixed every year in October at the time of the lowest water level¹

The situation resulting from the double boundary could not help causing difficulties, so the governments in 1857 agreed to try to make exchanges or arrange sales between various communes.² A third boundary between the two states was contained in the Treaty of the 10th of January 1861. The construction of the Rhine bridges had raised a difficulty in respect to the provisions of the treaty fixing the center of the thalweg as the international boundary. This would almost never be in the center of the river, so that the principal share of a particular bridge might fall on one or the other states, depending upon the course of the channel. To obviate this difficulty and to fix political control, the governments made the middle of the bridge the boundary on Rhine bridges, so that there were three separate boundaries on the river, the thalweg boundary, the so-called ban boundary, and this bridge boundary. Consequently, a crime committed on a certain place on a bridge, for example, might be justiciable in France, though if committed on a boat on the river directly beneath, might subject the criminal to the punishment in the Baden courts.

The difficulty arising from a cut which changed the current of the river was met in the Bavaria-Baden Treaty of November 24, 1825, which provided for improvement in the

¹*Der Rheinstrom*, p. 290.

²*Rhein Urkunden*, vol. i, p. 547.

river, by ceding respectively the territories which the new condition left on the Bavarian bank to that country, on the Baden side to the grand duchy. Government, communal, and other public property, however, remained in its original owner.¹

In the Treaty of 1831 between Belgium and Holland, Belgian vessels were admitted to the waterways between the Rhine and the Scheldt on the same terms as Dutch vessels. The tolls, in no case, could be greater than the tolls for corresponding stretches of the Rhine, and by the Treaty of the 29th of July 1846² vessels of each power were put on the same basis as national vessels both in respect to tolls and other dues by sea and other rivers or canals. Previously in November 1842,³ navigation of waters between the Scheldt and the Rhine was made free for subjects of both states, Belgian ships and cargoes were given all rights and privileges granted to those of Rhine states and were to pay only the tolls charged Dutch boats as long as Belgian boats had no advantage over Dutch boats on the Rhine or in certain internal waters. Tolls between the Rhine and the Scheldt were fixed at a low figure and merchandise brought from Belgium or down the Rhine on Belgian boats was admitted to the warehouses of Dordrecht, Rotterdam, and Amsterdam under the same conditions and paid the same charges for the use of port facilities which were fixed in the Treaty of Mayence. These vessels were also given the right to unload in Dutch harbors goods for Dutch consumption. On September 1, 1844, Belgium signed a treaty with the German Customs Union granting the same treatment as national ships to the ships of each state in each other's

¹ *Ibid.*, p. 183

² Martens, *N. R. G.*, vol. ix, p. 273.

³ *Ibid.*, vol. iii, p. 613.

waters. The treaty requires the captain of a Rhine vessel to prove his identity by a patent of his state.¹

The treaty of commerce between Holland and the Customs Union, 31 Dec. 1851, assured to boats of the Union states the right to choose any route between the Rhine and Antwerp without toll so that Antwerp as one of the three Rhine sea ports, in competition with Rotterdam and Amsterdam, was not discriminated against. As a result Belgian vessels had the privileges of the Rhine by the middle of the century and German boats could go to Antwerp on the same terms as Dutch. It is an interesting commentary on the broadening of sentiment in favor of free international transit that the same government, which, at the end of the 18th century, successfully prevented Antwerp becoming a sea-port, in the first half of the nineteenth admitted that city to equality with her own ports in up-river trade. In both cases Dutch cities were interested in strangling competition by the use of legal rights, in one case secured by treaty, in the other a result of territorial ownership.

The Convention of Mayence left substituting very serious legal hindrances to navigation and commerce on the river. The amount of the toll was not the only cause of expense and difficulty arising from a continuance of the ancient institution. As it depended in part on the character of the cargo, there was necessary some investigation of the cargo at each of the many toll stations scattered along the course of the river, 8 in the territory of Prussia alone. Each time a boat passed a toll station it was forced to halt and to take its turn in awaiting the inspection of its papers and if necessary an examination of its cargo by the toll officers. A dispute might cause great delay, particularly if there happened to be many other boatmen in the same position. There was also the difficulty necessarily involved

¹ *Ibid.*, vol. vii, p. 213.

in the existence on the river of six states, each with its own customs system and each on good grounds suspicious of smuggling across its border.

The tolls on the river were only a small part of the burden on commerce resulting from the toll and customs systems of the many states into which Germany was divided. Not alone transit charges, but import and export duties so weighed down internal trade that it is a great testimony to the spirit of the German merchants that there was any interstate commerce at all. Said the noted economist Liszt in 1819, speaking for an assembly of merchants: "The thirty-eight toll and custom lines in Germany lame inland trade and bring about the same result as if every limb of the human body was so tightly bound that the blood could not flow into another. In order to trade between Hamburg and Austria, between Berlin and Switzerland, 10 states must be crossed, 10 toll and custom regulations must be studied, 10 times must passage toll be paid" ¹

Liszt and his liberal friends in central and southern Germany sought a way out of this impossible situation by making Germany a commercial unit under the imperial diet, but the energetic Prussian government had another method which would strengthen the power of the Prussian kingdom as well as bring commercial unity and freedom to the sorely oppressed Germans. In 1819 a Prussian customs law was promulgated which while simplifying the customs duties and their collection contained a declaration of freedom of transit through the whole kingdom. But at the Prussian frontiers the traveler or merchant still had a customs and a transit toll to pay, and as Prussian territory stretched across the whole of Germany from east to west, the Prussian toll gates formed a barrier to commerce, back and forth between the North Sea ports and the interior of the country. Ger-

¹ Quoted, Oncken, *Das Zeitalter des Kaisers Wilhelm*, vol. i, p. 3.

many rang with protests against the tyranny of the Prussian Government and sometimes with a familiar sound. The ruler of one small state entirely enclosed in Prussian lands, demanded that the Elbe, on which he touched, be promptly made free on the ground that his country was entitled to an open road to world commerce, free access to the world sea. Others declaimed against the brutal policy of their powerful neighbor and sought more vigorously to vest in the imperial legislature the power to open all the roads in Germany to German goods and German merchants. Nothing could be done. Prussia stood fast. There was but one way to the goal—let the princes and free cities make a treaty with Prussia who stood ready to open her roads and her markets to any confederate willing to accept the Prussian tariff and join the Prussian commercial administration. Such a relinquishment of sovereignty was at first too much for the small states. Nassau and Baden were loud in their protests against this evident plot against their sovereignty. Bavaria and Wurtemberg for a time organized a central commercial union to which they tried to ally the southern and central states, but with no substantial success. The smaller states, especially those with an open door to world trade, turned a benevolent eye on the profit made by their citizens through smuggling operations into Prussia. But at length the logic of facts overcame all particularistic resolutions and the Grand Duke of Hesse, February 14, 1828, signed the first treaty of accession to the Prussian commercial system.

The operation of the Commercial Union was sufficiently successful to induce other states to join. In the Treaty of March 22, 1833,¹ Bavaria, Wurtemberg and Electoral Hesse joined Grand Ducal Hesse and Prussia. Saxony came in on March 30 and was followed by the other states.

¹ Martens, *N. R. G.*, vol. xi, p. 525.

Baden joined in 1835 on the 12th of May;¹ Nassau on the 10th of December of the same year;² Frankfurt January 2, 1836,³ thus putting all the German Rhine territory into the union.⁴

The Customs Union treaties provided that highway tolls should only be allowed in amounts sufficient to meet the ordinary cost of repair and maintenance and that water tolls and tolls for conveyance by rivers were to be charged in rivers regulated by a treaty in accordance with the treaty. Also the states agreed to open negotiations relative to the navigation of the Rhine and its tributaries with the object of making an arrangement by virtue of which navigation tolls should be, if not wholly abolished, at least considerably lightened. On other rivers tolls were to be levied in conformity with the ordinances of the governments, but there should be equality among the citizens of the union states.⁵

As a result of the freeing of the roads from artificial barriers, and the improvement of land transportation generally in Germany, competition with the river increased. The introduction of the steamers also made delays more burdensome than they had been when sail and horse were the motive power. Speed and promptness were necessary if the steamer were to earn freight sufficient to enable her to overcome the cost of operation, interest on the greater investment and far heavier expense for repairs. Delays which would not render a sailboat unprofitable, would

¹ *Ibid*, vol xiii, p 228.

² *Ibid*, p. 439.

³ *Ibid*, p. 516.

⁴ Dawson, *Protection in Germany*, p 19, Oncken, *op. cit* ; Treitschke, *Geschichte des Deutschen Reiches*, vols. iii, iv.

⁵ See Report on the Prussian Commercial Union *Accounts and Papers*, 1840, vol. xxi. Treaty of 1833, *Rhein Urkunden*, vol i, p. 300. Treaty of 1853, *Rhein Urkunden*, vol. i, p 534. Martens, *N. R. G.*, vol. xvi, p. 267. *Rhein Urkunden*, vol. ii, p. 70.

make it impossible for a steamer to continue in business. The railroad, which for a time threatened the river traffic with extinction, was another strong argument in favor of the abolition of artificial hindrances on the waterway.

Prussia had the greatest interest, both economic and political, in a free river. She had also the greatest financial interest in the Rhine tolls, but that the growing state could afford to disregard for the improvement of its trade and the advancement of its policy of creating a united North Germany through the medium of the economic interest of business, involved in free transportation and freedom from customs barriers within the territory. She, therefore, took the lead in the movement for reduction of tolls and the lessening of delay consequent to the existing state of affairs upon the river.

However, neither the Prussian nor any other government considered the question from a broader point of view than their own interest. The treaty had reserved to each state the right to lower tolls and they were not obliged to allow other states to share in the reductions. This power they promptly made use of. Advantages given to local boats could be used as trading points with other states who desired to get the same advantages for their own boats, and it was possible for Prussia to use this weapon as an additional means of inducing Rhine states to enter the Customs Union, since then their boats were treated as national boats in other states of the union and so automatically benefited by reductions in toll or privileges granted such boats. In 1835 Prussia¹ freed from toll all goods or boats which transited on the river within her territory but did not cross the boundary, thus greatly facilitating transportation by river on the long stretch within her territory. The tolls on other goods also were greatly reduced and an important pri-

¹*Rhein Urkunden*, vol. i, p. 329.

vilege which Prussian and customs union boats enjoyed was the right to pay tolls only at the point of leaving Prussian territory or at the point of entering, so that instead of being held up eight times on the river a boat would only be obliged to stop once. The Prussian government estimated that the result of this action was to reduce its total tolls 50 or 60 per cent.¹ The upper river German states, Bavaria, Baden, Hesse, and Wurtemberg, Nassau being still recalcitrant, in order to attract trade to their harbors agreed in 1836² to refund to boatmen two thirds of the goods toll paid in Prussia on overseas goods and abolished the toll on local products unloaded at their ports, and in the fall of 1837³ they increased the refund to the whole toll paid. The free city of Frankfurt joined this agreement in 1838.⁴

The customs union policy of freeing goods produced in the union states, from customs duties was extended by Prussia and the other customs states to the Rhine tolls, thereby giving a decided protection to home producers. When the customs union was renewed in 1841⁵ the whole union territory was made a unit for customs and toll purposes, so that vessels carrying goods to any union port were subject only once to examination and paid their tolls as well as their customs duties only at the port of entry. On passing the point where they crossed the boundary their holds were sealed or guards put abroad to prevent smuggling, but the great annoyance and delay of stopping at the various toll stations and customs houses was entirely done away with.⁶

¹ Decree 28 December, 1836, *Rhein Urkunden*, vol. i, p. 341.

² *Ibid.*, p. 334.

³ *Ibid.*, p. 343.

⁴ *Ibid.*, p. 357.

⁵ *Ibid.*, p. 427.

⁶ Treaty of 15 April, 1862, *Ibid.*, vol. ii, p. 17.

The German states followed steadily the lead of Prussia in reducing the tolls, either by reducing the amount or by changing goods from a higher to a lower class, thereby reducing the toll paid from a quarter to a 20th of the normal.¹

France followed the same course. In 1844 she agreed with her neighbor state, Baden, across the river,² to abolish all goods tolls for cargoes not passing the Rhine bridge at Strassburg, either up or down stream, but the interests of the contracting states were guarded by permitting either to impose its share of the remitted toll on cargoes carried in the boats of any state which did not put its boats on the footing of the national boats in its stretch of the river. She went further in the Treaty of Navigation with the Customs Union on the 2nd of August 1862,³ in which the two states agreed to accord to their respective boats and cargoes on the Rhine and the Moselle, every reduction and favor in respect to navigation dues or customs tariffs accorded to national boats and cargoes or those of any riparian state. As a consequence, it was specified that goods whose entrance was hitherto only permitted in French bottoms might be admitted at the port of Strassburg for consumption in France, if they came from a Rhine port in a German Rhine boat, on payment of the same tariffs as if they had been imported under the French flag. France in 1866 changed her system from that of protecting her merchant marine to that of equality of all flags.⁴ No advantage was, for the future, given French ships, no higher tariff levied on goods imported into France by foreign ships.

Holland also changed her position rapidly under the pres-

¹ Agreement 26 March, 1834, *ibid.*, vol. i, p. 305; 12 December, 1860, *Rhein Urkunden*, vol. ii, p. 3

² *Ibid.*, vol. i, p. 461.

³ *Ibid.*, vol. ii, p. 19.

⁴ Law of 19 May, 1866, Lyon Caen and Renault, *op. cit.*, vol. v, p. 8.

sure of economic conditions After a short tariff war with Prussia, the two governments negotiated a commercial treaty, on June 3, 1837¹ which granted to the vessels of either power the treatment of national vessels in the ports and on the rivers of the other. Dutch ships secured on the Prussian Rhine all advantages given to Prussian ships, so that Dutch boatmen had no toll to pay for internal Prussian transport and had the same privilege of paying only once at the lowered rates for goods crossing the frontier. Prussian vessels were made free of all tolls down river for goods and paid only a half toll on goods loaded in Holland going up the river. Goods in the lowest class were entirely free. They were to pay for the future no boat toll for fluvial navigation but remained subject to Dutch transit toll to sea.²

The Dutch interest had shifted from the fiscal benefit of the tolls and the commercial benefit of protection of her own mercantile marine to the advantage of building up her own Rhine cities by attracting trade to them from overseas and up and down the river On March 18, 1845, the King was authorized to diminish temporarily, to abolish, or reimpose transit dues charged in accordance with the Treaty of 1831 since the improvement of trade made it desirable that a change be made in the policy of transit or navigation dues. Holland did not take the position that she should, without compensation, surrender her rights to tolls, but she authorized the Chief Executive to bargain with other states for complete freedom from the legal restrictions on free fluvial navigation.³ In the same year the King was

¹ State Papers, *Rhein Urkunden*, vol. i, p. 343; Martens, *N. R. G.*, vol. xiv, p. 250.

² See *Accounts and Papers*, 1840, vol. xxi; Report on Prussian Customs Union.

³ Langemans, *Traité des Pays-Bas*, vol. iii, p. 156; *Rhein Urkunden*, vol. i, p. 471.

able to make reciprocal agreements under this power with Bavaria, France and Baden.¹ Soon afterward, however, the Dutch Government completely reversed its position in the first quarter of the century. By the Act of August 8, 1850² all tolls authorized by the Treaty of 1831 were suspended, but the King was permitted to restore them on vessels whose governments treated Dutch less favorably than national vessels. Freedom from tolls, therefore, instead of being dependent on an agreement for equal treatment came into effect at once with the power in the executive to restore it against the ships of certain governments if he felt that the national interest required its reimposition. The act was quickly followed by a treaty with the Customs Union, Dec. 31, 1851,³ German and Dutch boats were put on an equal footing in their respective waters and it was agreed that vessels on the river, even if they were not of the Rhine navigation, were to have the same rights as Rhine boats, reflecting the aspirations of Cologne to become a sea port. German boats were permitted to choose any route they pleased going to or coming from Belgium with an express reservation for the navigation dues on the Scheldt for the vessels going up to Antwerp, a reservation which did not affect the Rhine navigation. "The Netherlands expressed the hope that the customs union states would continue their efforts for the total abolition of tolls on the Rhine, so that commerce and navigation might enjoy complete freedom on the whole German Rhine." The Dutch Government also engaged to construct at Rotterdam a free port as convenient as possible for Rhine boats where goods coming down from Germany or bound thither could be

¹ Langemans, *op. cit.*, vol. iii, pp. 157, 158, 159; *Rhein Urkunden*, vol. i, pp. 471, 472, 473.

² Langemans, *op. cit.*, vol. iii, p. 154; *Rhein Urkunden*, vol. i, p. 516.

³ Langemans, *op. cit.*, vol. iv, p. 24; *Rhein Urkunden*, vol. i, p. 521.

warehoused and transferred without any other charge than the actual expense of handling and with the least possible formality. The final step in the way of river freedom so far as Holland was concerned, was the Treaty of July 7, 1865,¹ with the French Government by which the two states granted one another's vessels reciprocally the right of the most favored nation in each other's territories. Consequently, the system of advantages for national boats and for goods imported in national boats practically disappeared upon the Rhine.

The object for which Prussia had long been striving, the transformation of the Customs Union into a federal state composed of all North Germany and from which Austria should be excluded, was accomplished as a result of the short and decisive campaign of 1866, resulting in the defeat of the armies of Austria and the Southern German States and the occupation of the German states by the Prussian military forces. In the peace treaties with the Rhine states which closed the war there was inserted an article which contained an agreement to abolish all navigation tolls on the Rhine provided other states did the same.² The free cities of Frankfort and Nassau were annexed to the Prussian kingdom, lessening the problem of the river by decreasing the number of governments to be dealt with. The North German Union, a transformation of the Customs Union, in its constitution, further simplified the situation by making all merchant vessels of the confederate states members of a common merchant marine and prohibiting tolls on national waterways except for the actual use of works for the benefit of navigation.³ So the position of

¹ *Ibid.*, vol. ii, p. 70.

² Peace Treaty of Prussia and Baden, 17 August, 1866, *Rhein Urkunden*, vol. ii, p. 71. Hesse, Prussia, 3 September, 1866, *ibid.*, p. 271. Bavaria-Prussia, 22 Aug., 1866, *ibid.*, p. 106.

³ Constitution of the 17 of April, 1867, *ibid.*, vol. ii, p. 72.

the German states in favor of a toll-free river was established.

The Central Commission had not been inactive during this period though joint action through the commission was plainly a very secondary influence compared with direct action between the states in the lessening and final abolition of legal impediments to free navigation. It is evident that joint action by all the governments would be more difficult to attain than separate action by the individual states interested in furthering navigation, since the commission could only be an instrument for the accomplishment of a joint interest; while as has appeared, it was the individual interest of particular states as that interest was developed by the change in means of navigation and in the character of commerce as well as by political ends, which was the motive factor in the abolition of man-made obstacles to the free use of the great artery of commerce.

The immediate results of the treaty so far as it regarded navigation, made an interesting comment to the argument in favor of forced unloading and boatmen's associations. In spite of the requirement of free competition, both were practically continued, through the effect of the nature of the stream and of the energy of the business men in the cities where naturally the transfer from upper river to lower river boats took place.

Evidently it was not economical to send through to Holland the smaller boats which could pass through the narrows and around the sandbanks above Cologne, and clearly also transportation would be greatly expedited if shippers could count upon space in large, therefore cheaper, boats whenever they wanted to forward their goods. Boatmen, also, could use their vessels to better advantage if they could take on full cargo at one point or at a few points, instead of being compelled to stop at many, and especially if they

could be reasonably sure to find a return cargo on their arrival. It was therefore of consequence to the great ports to assemble large quantities of goods bound up and down stream and to assure prompt forwarding to their consignees.

Vigorous competition at once arose among the Rhine cities for the forwarding business. Realizing the probability of this condition, the negotiators of the treaty had expressly permitted cities to arrange for regular lines of boats and to make agreements with captains who would agree to join a line and submit to regulations. The Dutch authorities had already in operation a system which was successful. It maintained regular communication, kept the freight rates reasonable, and also assured the reliability of the captain. As at this time it was usual for a captain to own his boat, or at least for not more than two or three boats to be owned by one individual and there was no great transportation company to answer for loss or to supervise the management of the vessels, the care used in admitting boatmen to the lines and the discipline exercised by their fellows, jealous of the lines' reputation, or the city magistrates, representing the merchants and the general municipal interest to satisfy skippers so that trade would increase, was an important guarantee of faithful service.

The cities promptly made use of their privileges. Cologne in particular arranged for lines up and down the river to assure her supremacy as the transfer point from the large barges on the lower river to the smaller vessels which carried goods to Frankfort and upper river points. Mayence was less fortunate in her geographical position; Mannheim at the confluence of the Neckar, became the distributing point for the upper Rhine and for South Germany. Boats which could navigate to Mayence could continue to its active rival higher up and on the opposite, the east bank of

the river, where lines of wagons by land to southern Germany and boats up the Neckar and the dangerous upper Rhine to Strassburg and Basel, found their natural meeting point.

Free competition among boatmen, for the regular lines had no monopoly, made for quicker and better service. The lines could be sure of a certain number of boats for towing, so regular relays of horses to be ready at regular times could be arranged for at fair rates, and delay was lessened. Consequently much the same condition of boatmen's associations and of forced unloading continued after 1851, but under the compulsion of economic law they were better organized and better developed, than under the compulsion of human law.

Cologne and Mannheim were not the only ports which had through lines. Every important point on the river organized this form of transportation, and there were many independent boatmen who were used by large houses which contracted for whole cargoes and by others who for various reasons preferred them to the regular lines, but the promptness and reliability of the lines made them the real carriers of Rhine commerce in the years immediately after 1831.

Even before the new treaty was signed, however, the same agency which had destroyed the small masters in other branches of industry and commerce, had appeared on the Rhine. A steam engine propelled a Dutch boat from Rotterdam to Cologne in 1816, in 1822 a Dutch steamship company was organized, and in 1827, Cologne merchants founded another, and their example was followed the next year in Mayence. A Dusseldorf company was set on foot in 1838. The Cologne and Mayence companies arranged for co-operation and the Mayence company consolidated an earlier Baden undertaking. In 1853 the Dusseldorf com-

pany also made a pool with the Cologne line. These new lines quickly took away all the passenger business from the lines of passenger sail and tow boats, and the convenience of travel on their steamers had its part in enormously increasing passenger traffic. Freight, however, largely remained in the hands of the old lines as the saving of time was not important in case of most goods, and the sailboats could transport cheaper than the steamers, though the latter carried ever increasing loads of goods whose delivery was worth paying for. Steam, however, held another trump in its game with sail and horses, and with it won the game. The S. S. Hercules under the Dutch flag began towing service in the Netherlands in 1829, but the high costs and inappropriate barges, prevented great headway till in 1841 an iron lighter was launched. Its success caused the creation of a towing company in Cologne in 1841 and another in Mayence in 1842, followed by Mannheim. Before this competition the Rhine boatmen lost ground in river transportation. But not without protest. The same outcry which everywhere followed the introduction of steam, made itself heard on the Rhine. The men whose living was threatened appealed to their princes and even to the powerless Imperial diet in Frankfurt.¹ The princes tried to help out by requiring the new companies to employ the boatmen as far as possible on their own steamers and barges, and in some cases, especially Mannheim, the boatmen bowed to the inevitable and themselves became interested in the new undertakings.

The change was not as violent as was feared. The great increase in tonnage made it possible for many boatmen using larger boats to continue in competition, gradually, too, using the tugs instead of horses as motive power; so the towpath disappeared as an important element in river up-

¹ Clapp, *op. cit.*, p. 23.

keep and the tow horse survived only where the rapid current above Bonn made it profitable to use him to help out steam tugs for short distances.

In 1866 they still carried half the tonnage but the horse had almost wholly given place to the tug. The regular lines, however, had to be given up in favor of the new steam lines operated by large companies and the independent Rhine bargeman lost his commanding place in the trade.¹

Steam, however, has raised up a more dangerous enemy to steam on the water than had been sail or horse. The railway appeared in the valley at first as a feeder to the river. The roads brought business to the larger ports from the interior and thus aided the process of establishing trade centers from which the river lines radiated. From a friend, however, the steam locomotive soon developed into a rival of the steam boat. The first direct rivalry was the Cologne-Antwerp road opened in 1843, one of whose objects as proclaimed by its projectors was an attack on the oppressive Dutch control over the navigation on the lower river. The Baden railroad, from Mannheim up the level valley to Basel paralleled the river and immediately began to bid for business against the waterway. It was almost immediately successful with the up-stream traffic. There passed under the Strassburg bridge going upstream in 1843: 1790 tons, in 1846 92 tons"¹ and in 1855 none at all. In 1836 up and down stream tonnage was about equal. Downstream the current aided the boatmen and raftsmen so that there was little change until 1859, when even this traffic began to fall off. For the period 1860-1866 it was less than a half of its former amount. At Alt Breisach on the Baden side, near Basel, the change was even more pronounced.

Only on this rapid, sandy stretch of the river, however,

¹ Eckert, *op. cit.*, p. 286; Clapp, *op. cit.*, p. 58.

² *Ibid.*, p. 26.

where the comparatively expensive waterway competed with the railroad track laid on a level valley with little engineering trouble, did the railroad do great harm to the steamboat. The upper Rhine steam navigation companies recognized their defeat above Mannheim and made an ally out of the Baden railroad to build up the port of Mannheim as a distributing point to and from South Germany and Switzerland; the governments aided by improvements in the river, by lowering tolls and doing away with many annoyances in collection of tolls or customs, the improvement in boats and engines, together with the larger boats which the better regulated river and technical skill made possible, all played their part, but above all must be placed the enormous growth of business in the new Germany equipped with steam power and freed from the shackles of local customs barriers. Rhine traffic from the Swiss to the Dutch border increased in the 30 years 1836-1866 over four fold, despite the loss above Mannheim ¹

This development supplied bulk goods which took the place of the colonial wares and cotton, formerly the mainstay of the upper river traffic but which had deserted it for the railway. The increased demand for coal and iron ore more than made up for the tonnage lost and the cheaper transit and handling in the barges assured the life of the river trade in the period and forecast the change in Germany from an agricultural and forestry to a manufacturing community.

Several attempts were made to realize the hope of the Cologne merchants that their city would become a seaport. A company was formed which sent a sailing vessel to London in 1837 and even to New York in 1838. The project was unsuccessful. Another attempt in 1845 had no better

¹ See tables Eckert, *op. cit.*, pp. 331-3.

fortune and for the time the German shippers had to be content to transfer their goods in the Dutch harbors or Antwerp.¹ That the Berlin government took this last attempt seriously is evidenced by the order of July 18, 1846, permitting captains and ships from Baltic ports trading with the Rhine to receive Rhine licenses, to avoid trouble in Dutch waters.²

The common interest prevailed in the acceptance of a common regulation of navigation agreed upon in 1850 by the riparian states, and established as the law in each government. Especially since the increase of steamers, was it necessary that the rule of the road should not change each time a vessel crossed a boundary, but that "from Basel into the sea" a single set of regulations should govern.³ This regulation, amended at various times, was entirely revised in 1864.⁴ Rafts were subjected to a common rule in 1859.⁵

¹ Eckert, *op. cit.*, p. 251.

² *Rhein Urkunden*, vol. i, p. 489.

³ *Ibid.*, vol. i, p. 501.

⁴ *Ibid.*, vol. ii, p. 30.

⁵ *Ibid.*, vol. i, p. 558.

CHAPTER V

TREATY OF 1869

AFTER 1867, it was evident that the Treaty of 1831 needed revision. The Rhine tolls had been abolished on the river and the governments were agreed that they should not be revived. The success of the steamboat and the wide substitution of the corporation owning many vessels for the independent master, had revolutionized navigation and rendered unnecessary many of the requirements of the treaty.

The new treaty was dated 17 October 1868, exchange of ratification took place 17 April 1869.¹ The plenipotentiaries declared that the revision was made necessary by the changes in the old treaty and the changes in the conditions which made its provisions no longer correspond to the necessities of Rhine navigation. In the new treaty, they have applied the principle of the freedom of Rhine navigation in relation to commerce.

The intention of the negotiators of the Peace of Paris of 1815 at last finds a place in a Rhine treaty. "The navigation of the Rhine and its mouths from Basel into the open sea up or down shall be free to boats of all nations for the transport of merchandise and persons." "No obstacle to free navigation except the regulations prescribed in the convention made necessary for the maintenance of general security." The Leck and Waal are considered as parts of the Rhine. [Art. 1] Boatmen shall never be compelled at

¹ Martens, *N. R. G.*, vol. xx, p. 355; *Rhein Urkunden*, vol. ii, p. 80; Hertlet, *op. cit.*, p. 3, 1897.

any point on these waterways to unload or transfer their cargoes. [Art. 5] The old class of boats belonging to the navigation of the Rhine appears in Article 2. These boats may choose any waterway which they please to cross the Netherlands between the Rhine and the open sea or between the Rhine and Belgium. Rhine boats are those having the right to fly the flag of one of the riparian states and able to prove the right by a legally acquired document. [Art. 2]

Rhine boats on all these waters, are put on the same footing as national boats. [Art. 4] The distinction between Rhine boats and others is further expressed in the protocol attached to the treaty which expressly declares that the right of exercising free navigation on the Rhine and its mouths does not extend to the privileges accorded only to Rhine boats. The requirement that a boat should be examined and carry a certificate from one of the riparian states was continued, but the requirement of an annual renewal was dropped. The examination, however, must be renewed after each important repair or change in the boat. [Art. 22]

The right to navigate a sail or steam boat on the whole Rhine or on a part of the river belonging to several riparian states is only to be granted to those who prove that they have navigated the river during a fixed time and have received from the Government of the riparian state where they are domiciled a proper license which in case of change, of domicile to another riparian state, must have the new domicile noted upon it by a public authority. [Art. 15] This provision marks a very decided difference from the old requirement that these licenses could only be granted by each state to its own subjects. The Prussian memorandum states that there was no reason for continuing the old provision. One of the reasons for the change was that the toll being entirely abolished, there was no reason for identi-

fying the nationality of a ship by the nationality of its captain for the purpose of proving that it was entitled to the lowered tolls or advantages given to national boats or to boats of states with whom treaties were in effect. Furthermore the new treaty permitted subjects of other than the riparian states to be licensed. This requirement of domicile in a Rhine state, together with the advantage given to a registered Rhine boat, particularly crossing Belgium, would naturally have the effect of preventing any influx of foreign boats upon the river. It, however, made it easy for sea vessels to navigate the river as the requirement that a steamer on the river must have a concession from a riparian government was dropped. However, a vessel whose captain was not domiciled in a Rhine state, as for instance, an English vessel with an English captain and crew would seem not to be permitted to sail up the river even to Cologne, but would be obliged to take on board a Rhine captain and secure a Rhine permit after an examination, therefore considerably interfering with the free navigation proclaimed in Art. I. No examination was required of Rhine captains, but as a guarantee of capability they must have navigated the river for a given time. Whether this requirement was necessary as far as Cologne which is practically the head of navigation from the sea is very doubtful, though it is undoubtedly reasonable so far as navigating the upper river is concerned ¹

The change in the character of boats on the river from the independent sailboat owned usually by its own captain to the fleet of tugs, steamers and barges owned by a com-

¹ Pradier-Fodere, *Droit International*, vol ii, pp 299, 300, says that though a foreign captain and a foreign ship may be allowed to navigate on the Rhine under the treaty, if the captain has navigated the river for three years and is domiciled in a river state and the ship is visited and passed by the riparian government, they will still not be members of the Rhine navigation or enjoy its privileges.

pany, led to the dropping of the old requirement that the name of the boat for which the captain was licensed must be noted on the license. The provision had already been much modified and by Section 16 of the new treaty a licensed boatman can command any sailboat or steamboat, no matter what state it belongs to. Only the government of the boatman's domicile may revoke his license, though he may be punished by any other riparian state for any act committed on its territory, or any state may request of the proper government that the license be cancelled. This should happen whenever the boatman was punished for continued contraband, for fraud or other crimes against property or for more than one serious breach of the navigation police regulations.

Tolls were entirely abolished on the Rhine or its affluents or on the navigable ways leading to Belgium or to the open sea. Even buoy dues below Rotterdam and Dordrecht are abolished. [Art. 3] Article 7 adds that the transit of all goods was free except for necessary sanitary measures and the riparian states shall not levy any transit dues upon any such property, during transit or after transfer of cargo to another vessel or into a warehouse.

The free ports were continued with the same provision that there should be no tariff dues levied upon articles unloaded and warehoused unless they are entered for interior commerce. [Art. 8]

Article 9 puts into effect the regulations existing on the river by permitting the passage through the territory of a state or customs union, of boats without examination if the holds are sealed or an official guard put on board.

Articles 28-30 continue the old rule that works in the river, the upkeep of the channel and the towpath, are affairs of the local governments. The obligation to keep up the towpath and channel is more definite, and the engagement

to prevent interference with navigation is mutually undertaken. In the new treaty there is furthermore, agreement that the governments with common boundaries or holding opposite banks, will communicate to one another any plans for works in the stream or on its shores and will come to an agreement in case of dispute.

The Central Commission, Articles 43-47, was practically unchanged. It remained a consultative body except for its power as appeal court in the Rhine cases. The Chief Inspector, the only common official, elected by the states jointly, was omitted. The work of preparing the agenda of the commission, both administrative and judicial, did not require so important an officer and that of acting as representative of the common interest of the navigators against the individual governments had become of no importance as the obstructions, legal and natural, were lessened. In fact, the Inspector had not in a single case been able to persuade a government to act for stream correction or to remedy abuses in administration, only the intervention of the Commission itself, which meant the action of the governments represented, had been able to accomplish results.¹ The tolls were abolished, so one excuse for his existence, oversight of the toll collection, had disappeared.

The four district inspectors, appointed by the governments in their districts, remain with the same supervision of the local authorities in the interest of navigation. [Art. 42] In addition to the inspectors, the general interest in the navigability of the channel was represented by a new organ, again with only advisory powers. A committee of hydraulic engineers, one sent by each government, was to make a trip over the river, at times appointed by the Commission, to examine the state of the channel, investigate the needs for new works and report to the Commission, §31.

¹ *Rhein Urkunden*, Prussian Memo., vol. ii, p. 117.

Thus the commission would have reliable information on which it could base its own reports, and consider any project which might affect navigation.

With the tolls would go part of the reason for the existence of the Rhine courts, whose jurisdiction over all branches of the toll regulations had been the original cause of their creation in the Octroi Act of 1804. The representatives of Holland and Baden urged that these special courts should be abolished and that there be retained from the Rhine judicial system only the reciprocal executory force of judgments in river cases. This would include, of course, the provisions for giving security and the consequent releasing of a boat to continue its journey. There was a particular objection to the maintenance of the appeal to the Central Commission. The commissioners were not experts, either in the law or in navigation, so that they were not a proper body to sit in judgment. It was, besides, urged that the Commissioners represented their states, that they were diplomatic agents and therefore acted more as a board of arbitration than as judges. As the Commission met only once a year, an appeal to it might result in great delay and it was further objected that the losing party by acting promptly could choose between the upper local court and the commission, therefore basing a choice on his opinion whether one or the other would be most apt to favor his side. The appeal procedure was wholly on written arguments and documentary evidence, so the commission lost the advantage which an appeal court would have had of hearing the oral arguments of counsel. These reasons, however, did not convince the other negotiators. The great majority of the chambers of commerce of the Rhine cities were in favor of the existing institutions and while the theoretical objections to it were many, it was felt that it had practically worked well and should be continued.¹

¹ *Revue du Droit International*, 1869, p. 494.

Particularly valuable was the execution of judgments in all states.¹ If the existing institution were abolished, however, and the settlement of navigation questions left to each state to be tried in whatever courts and under whatever conditions it pleased each government to prescribe, it would be hard to persuade the governments to agree to allow foreign judgments in navigation matters full authority. The usual rule that a preliminary examination and approval by the local court was necessary would then be applied and the execution would be of the judgments of the local court approving the foreign judgment, not of the foreign judgment itself.

Consequently, the interesting experiment in courts with an international competence and international jurisdiction was continued with the improvement which experience showed advisable. Their jurisdiction extended, in criminal matters, to all breaches of river police regulations and the rules of navigation in civil matters to disputes over (1) charges for port appliances, (2) obstructions placed by private persons to the use of the towpaths, (3) damage resulting from collision, (4) injury to land caused by tow horses [Art. 34]. Suit must be brought in criminal matters before the court of the place where the offense was committed and in civil, before that in whose jurisdiction the payment of charges should be made, or the damage was done—[Art. 36]. The procedure on appeal was set forth in the act, substantially that in force, and the boatman or raftsmen could still continue his voyage on giving a bond. Arts. 36-7 In favor of foreigners, the bond usually required of foreign plaintiffs in local courts was waived—[Art. 36].

The provision that judgments of one court should be

¹ Prussian Memo., *Rhein Urkunden*, vol. II, p. 115, Traut, *op. cit.*, pp. 27-29.

executory in all states was extended so that such judgments and process were to be treated in each state as if emanating from its own courts, and process could be served on any person domiciled in a Rhine state, at his domicile. [Art. 40.] So the process of the court ran over national boundaries, its decisions had, of their own force, international effect, and there remained an international tribunal, the commission, to prevent local injustice to foreigners.

With the other articles relating to the tolls disappeared the only reference to war. There was no more toll collection to guarantee during hostilities, there were no more toll collections to neutralize.

In the new treaty were omitted many of the regulations governing boatmen and navigation. They were considered either unnecessary or in conflict with the rights of the local legislative power. So far as they prescribed the duties of the captains, for example, that he should remain by his vessel (§5 of the Treaty of Mayence), they were contrary to the spirit of individualism. The shipper and the steamboat company could be better entrusted with the discipline of the vessel than the public authority.¹ The change in the control and ownership of boats, from the independent master to the large corporations made its mark on the new treaty.

A new set of navigation regulations was adopted by the governments on October 17, 1868, and put into effect the following year, except by France,² thus continuing the common legislation on this common concern. Alsace Lorraine, after 1870, took the place of France and passed an act to put into effect the new treaty.³

The navigation regulations were frequently altered by

¹ Prussian Memo., *Rhein Urkunden*, vol ii, p. 107.

² *Rhein Urkunden*, vol ii, p. 118.

³ 20 July, 10 August, 1874 *Ibid.*, vol. ii, p. 200.

agreements among the states. The last to come into effect was fixed in 1912 and adopted by the states in 1913.¹ The control of the navigation regulation and the rules of the road and the duties of navigators as between themselves has been firmly fixed as a common interest of all the riparian states. In a narrow, very busy river peculiarly fitted and used for long-distance navigation in the course of which boats cross the territory of several legislative jurisdictions, many of them small, it would be impractical to allow the common interest in the prevention of accident and the orderly handling of traffic to risk the danger of different rules in different states, determining whether a boat should pass to the right or the left, how long a tow should be, the character of signals, and other matters having to do with the police of navigation. Even in this respect, however, no legislative power was given to any assembly of the representative states, but every change had to be made by agreement between the governments, subject to change only by common consent.

As a result of the War of 1870, Alsace and Lorraine were ceded to the German Empire by the Treaty of Versailles, 26 Feb. 1871,² confirmed by the Treaty of Frankfurt on the 10th of May 1871.³

The whole course of the conventional Rhine above the Dutch border was in the territory of the new German Empire which succeeded to the North German confederation and finally crowned the work begun a half-century earlier by the Prussian Ministers. This did not mean, however, that only Holland and the Empire were represented on the Central Commission and had a voice in the international regulation of the river. The Constitution of the Empire did not give to the Imperial Government the con-

¹ *Rhein Urkunden*, vol ii, p. 587.

² Hertslet, *op. cit.*, vol. iii, p. 1912.

³ *Ibid.*, p. 1954.

trol over streams or navigation, but left to the states the management of their own affairs in respect to the improvements in and supervision over, water courses, subject, of course, to the existing treaties, and subject also to a provision similar to that in the Constitution of the North German Confederation declaring the vessels of the different states a common mercantile marine, prohibiting preferential treatment between the states and prohibiting the laying of tolls on foreign commerce or navigation. This latter power, as necessary to the commercial unity of the Empire and its relations with foreign countries, was reserved to the confederation.¹

Consequently, the Rhine Commission continued as before with the substitution of a Commissioner from Alsace Lorraine as a state of the Empire in place of the French Commissioner. Each German state sent a delegate as before who represented the particular interests of his state in the now limited field of action of the Central Commission, just as he had done in the old days of practical independence.

One interesting change resulted from the absence of a French Commissioner. Previous to 1870 the proceedings of the Commission had been recorded in French and German and in the event of a discrepancy the French text controlled. The German Governments soon after the cession of the French riparian territory expressed a wish to have German take the place of French as the controlling language and to substitute Dutch for French in the protocols. The Dutch while willing to consent to the substitution, refused to grant a privileged place to Germany and finally the Commission, finding the Dutch obdurate, assented to their view. Dutch henceforward took the place of the French language and both German and Dutch texts had equal weight, the usual international rule in respect to treaties in two languages.²

¹ Hertslet, *op. cit.*, vol. iii, p. 1946.

² Protocol, 4 Sept., 1877, *Rhein Urkunden*, vol. ii, p. 232.

The best evidence that the Central Commission as a court has been a success since the attack upon it was defeated in 1869, has been the increase in the cases brought before it. From 1832 to 1868, sixty-one appeals were laid before it and from that date to 1893 there were thirty-two, while from 1894 through the regular session of 1911 in a total of 184 cases the commission was preferred as an appeal court. It is striking, as the best informed commentator on the subject says, that "In these last 18 years alone nearly twice as many cases were brought before the commission as in the previous 62 years."¹

The jurisdiction of the courts locally extends only to the conventional Rhine and therefore does not include the sea territory in Holland at the mouths of the river.² Within this jurisdiction, however, the courts have authority over all cases even though one or both of the parties may be subjects of a state which is not a party to the Rhine Convention, and, therefore, the Central Commission as an international court has exercised jurisdiction over cases involving citizens of countries which did not join in establishing it and which have no share in the appointment of its judges.³

The necessity for legal knowledge on the part of the members of the Commission is evidenced by the fact that the law applied in each case is the local law of the court of the first instance having jurisdiction except where the regulation or the Rhine Act itself made special provision for the case. Consequently, the Dutch law would fill in gaps of the regulations, in a collision in the Netherlands waters, while for a similar accident happening in Hessian or Baden waters the law of that particular locality would be referred to.⁴

¹ Traut, *op. cit.*, p. 11.

² *Ibid.*, p. 73.

³ *Ibid.*, p. 72.

⁴ Traut, *op. cit.*, p. 127.

As a consequence, a local sovereign may pardon persons condemned by one of his Rhine Courts, even if the judgment was affirmed by the Central Commission, under his right to pardon vested by the local law

The courts on a civil side had no jurisdiction over contracts but solely jurisdiction over torts and breaches of duties imposed upon those engaged in Rhine navigation by regulations or by the treaty. Its criminal jurisdiction was contested in 1897 by Holland. The highest Dutch court decided that Sec. 37 of the Act of 1869 regulating the procedure in case of appeal to the commission, did not cover criminal appeals since it was based on the presence of two parties and did not provide for the public, the plaintiff in criminal actions, coming in as an appellant. The German States emphatically contested this conclusion. They argued that for nearly a century, and for thirty years under the Act of 1869, the commission had been hearing criminal appeals without objection, that there was no reason for believing that, when the Act of 1869 was being drafted, the commissioners did not intend to continue the criminal jurisdiction which dated from 1804. Furthermore, the Act of Vienna on which the Rhine Acts were based, expressly required the appellate jurisdiction in criminal as in civil matters. The legislation of the bank states, especially of France, passed immediately after the Acts of 1831, was the best commentary upon the intention of the negotiators. It seems conclusive, as to the understanding of the French Commissioner, in whose language the treaty was written, that the French law establishing the courts expressly permitted both criminal and civil appeals to the commission. After the revision of 1869, the French Government did not consider it necessary to amend the statute, thus establishing its interpretation of the new treaty as leaving the appeal in criminal matters. The Netherlands Government finally

agreed that it would not oppose the taking of criminal appeals to the Commission, but requested that it be given notice of such appeals taken from its courts.¹

The trend in commerce on the river towards the substitution of heavy goods of small value per ton, especially coal, for the agricultural products and colonial wares which formerly formed the bulk of trade, emphasized the importance of deepening and broadening the river, so that expensive transshipment would be unnecessary. The greatest economy in handling cargo, economy both of time and of expense, to say nothing of the loss incidental to transfer, was necessary if the Rhine boats were to hold their own against the competition of the railway cars running directly from coal fields to factories.

The fact that they have been handling an ever-increasing business is eloquent of the success of river improvement and it gives, besides, testimony of the astonishing development of the Rhine land. There passed in and out of German ports in 1900, 28,244,142 tons of which coal furnished 13,736,767 tons, wheat and other grains, 2,121,044 tons, iron ore, 3,179,449. By the Dutch border at Lobith there passed up-stream 9,056,565, down-stream 3,266,329, a total of 13,322,894, and of this 267,315 tons went direct to overseas ports in vessels from Rhine harbors. The great bulk of the goods sent to Holland and Belgium were for transshipment; so the down-river business, except for coal, 1,875,982 tons, was largely an export business, but the small percentage of direct sea traffic is notable. The total business in and out of German ports and over the border was 54,700,000 tons.

In 1912, the total business had increased to 95,810,941 tons to which might be added the traffic on canals and

¹ Traut, *op. cit.*, pp. 29, 87.

streams tributary to the Rhine, bringing the total to 99,-899,205 tons. The import and export from German ports contributed to this total 61,189,252. The tonnage passing the border in and out was 34,143,243, not including cargoes of vessels bound from Rhine ports to sea ports or vice versa, which carried 478,466 tons. Up the river past Lobith, to German ports, went 15,525,221 tons, down the river 18,618,021. The overseas trade was well divided, 268,217 tons down river, 210,199 up.

In 1909 the total traffic was 70,872,424 tons, of which shipments into and out of German ports contributed 45,-781,485, while past the border at Lobith went downstream to Dutch and Belgian cities 10,104,887 tons, up stream 15,-029,217, a total of 25,134,104. The direct trade between German Rhine harbors and overseas was 342,481 tons, 178,323 tons out and 164,157 in.

Coal has taken and holds a controlling place in Rhine trade, especially from the great Ruhr fields to Mannheim and Strassburg.¹ In 1911, 16,075,872 tons of coal, briquettes and coke left the Ruhr by boat up and down the river, in 1912, 18,283,918 tons.² In the last mentioned year, the total export of the same article from German Rhine harbors was 18,775,176,³ to which must be added 983,119 tons of lignite and briquettes, 19,785,295 tons, the total import, 7,402,762 tons.⁴ Thus from a total of 26,-393,077 tons of goods shipped from these ports 19,758,295 was coal in some form, but more than half of it crossed the Dutch border, nearly 10,000,000 tons, and 1,500,000 went up tributaries and canals, mostly to Frankfort.

¹ *Travaux du Comité des Etudes*, vol. i, p. 281.

² *Report of Central Commission*, p. 99.

³ *Ibid.*, p. 241.

⁴ *Ibid.*, p. 215.

Iron ore comes second. In 1911, 7,274,427 tons were entered at Ruhr docks, in 1912, 8,644,372 tons, most of which, 7,364,672 tons in 1912, was foreign ore transferred in Dutch harbors, or Antwerp from seagoing vessels to river barges. Thus 16,000,000 tons in round numbers, of the total 33,457,424 tons of goods brought into German harbors in 1912, was composed of coal products or iron ore. Without the German iron and steel works, and the Ruhr coal fields, the fate of Rhine traffic would be very uncertain. From a navigation standpoint, the country holding the Ruhr territory represents the chief interest on the Rhine.

The purpose of the riparian states to preserve to their people the monopoly of navigation has been successful. The opening of the river to foreign flags in 1869 has had little effect on the river fleet. In 1912, of a total of 354,466 total horsepower in river steamers, 53 per cent was German, 36.8 Dutch, 9.6 Belgian, and only $\frac{1}{18}$ of 1 per cent foreign. Of sail and tow boats with a total tonnage of 4,925,764 tons, 45.5 per cent was German, 36 Dutch, 17 Belgian, $\frac{1}{18}$ of 1 per cent foreign.¹

This traffic would have been impossible had the channel of the river not been broadened and deepened to make it possible to send large boats without breaking bulk through for long distances by water. Rhine tugs and barges have steadily increased from an extreme capacity of 400 tons in 1840 to an extreme capacity of 3600 tons in 1909. The average of coal barges before 1860 was 466 tons and since 1906 it had risen to 1813 which is about the limit of safety for navigation above Cologne under present river conditions.²

The great importance of deep water navigation and the

¹ *Ibid.*, 1912, p. 3.

² Clapp, *op. cit.*, pp. 43 and 44.

consequent joint interest of the states whence coal originates and the states in which are situated the ports where it is unloaded, comes most plainly to view with the development of the port of Strassburg. At the time of the Peace of Frankfort, shipping at Strassburg was practically non-existent. The first thought of reviving it was not by improvement in the Rhine, but by canals. The difficulty and expense of confining the channel were considered greater than the cost of building a parallel canal. In 1871 the Strassburg Chamber of Commerce petitioned the Imperial chancellor for a canal from Ludwigshafen opposite Mannheim, to their port, but without success. The Cologne steamship company was authorized to try in another way to bind the upper Rhine with the trade below Mannheim by laying a chain in the channel of the river, but finally gave up the project. In 1875 Baden considered building a canal on her side to end in the port of Kehl opposite Strassburg. The dispute went on between canal and river improvements and finally in 1887 Strassburg began a harbor which was opened in 1892 in which were unloaded during the year 28 Rhine boats carrying 11,048 tons. In 1900 her imports were 304,272 tons of which coal furnished 179,630 tons, wheat and other cereals about 77,000.¹ The disputes over the river were finally settled by the Treaty of 1901 between Baden, Bavaria and Alsace-Lorraine, by which it was agreed to deepen the channel to an average depth of six feet and an average width of about 260 feet up to Strassburg.² This work was still in progress in 1912.

Through the improved channel, the harbor's receipts in 1909 had risen to 949,779 tons with coal still contributing more than half, 542,529 tons, and cereals 223,661 tons. In 1912 the figures show steady development, but still, with-

¹ Altmeyer, *The Navigable Rhine*, pp. 39-48.

² Agreement 28 November, 1901, *Rhein Urkunden*, vol. ii, p. 469.

out coal and cereals, the port of Strassburg would be of little value. The total imports were 1,517,662 up stream, 374 tons down stream, and of the up stream trade 794,801 tons were coal, about 394,000 tons were wheat or other cereals. The export business is of little consequence in comparison. In 1912 it amounted to 150,543 tons. Evidently, without coal and foreign cereals the harbor of Strassburg would not be worth its cost, and only a small outlay on navigation improvements in the channel above Mannheim would be justified. It is equally evident, however, that without a depth of water sufficient to float all barges from the coal regions and the seaports to their destination, this port could never have come into life in view of the competition of the railroads and of the French canals from Belgium to Strassburg, transporting Belgian coal at low rates to the Northern Rhine district ¹

The hope of Cologne as a seaport revived with the improvements in the channel, but has never attained any great proportions. Until the average seagoing tramp of 6000 or 10,000 tons appears in the harbors of the Ruhr region and Cologne, the overseas business will be principally carried on in barges to Rotterdam, Antwerp, and Amsterdam for transfer to the large freighters and liners which find ready accommodation in these spacious ports. Before the war direct trade was chiefly with London, with German seaports, with Russia and with Sweden. An attempt made to establish a line to the Mediterranean countries with fruit for a return cargo failed.² The business shows an increase since the beginning of the century. In 1900, the total direct overseas business was 267,315 tons, which had grown to 304,990 tons in 1911, and 478,466 tons in 1912, fairly equally divided between imports and exports. By far the

¹ Clapp, *op. cit.*, p. 99.

² Clapp, *op. cit.*, p. 76.

larger share in this trade was with German seaports, thus being in effect internal German coasting trade, cabotage. In 1912, of the 268,247 tons sent out of the Rhine in seagoing vessels, 174,977 went to German harbors, while of the 210,199 thus brought in, 159,468 was from the same source. These figures reveal the insignificance of the direct overseas trade between the Rhine land and foreign countries.

A small proportion of this trade is carried in foreign bottoms. In 1900 and 1919 the Central Commission reports a few foreign flags on the river, mostly English. Some small steamers and ships flying the Union Jack even passed up above Cologne to take on mineral water for London. The French Comité d'Etudes for the Peace Treaty is authority for the statement that in 1912 62 seagoing steamers called at Cologne, of which only five belonged to foreign ports.¹

Another difficulty with the realization of the dream of Cologne is combined political-physical. The channel of the Waal, the principal arm in the delta, requires heavy expense in dredging to keep the required depth; and if it were deepened and widened to accommodate large sea steamers, the expense would clearly be much heavier. Is it likely that Holland would undertake the entire expense of this improvement for the benefit of German harbors, especially when, if successful, the result would be a very serious injury to her own great port of Rotterdam which exists as a transshipment point for Rhine-borne German goods? At best even with a deepened channel, the success of the Ruhr ports and Cologne as entry ports for overseas trade is very doubtful, as it is questionable whether it would pay to send large steamers at a very slow pace up the narrow winding river, 197 miles to Cologne.

¹ *Travaux du Comité des Etudes*, vol. i, p. 278.

An interesting comparison exists here with the mouths of the Danube. The European Commission of the Danube owed its existence to the necessity for keeping open a lane for sea ships to ports on the Danube, whence goods could be transshipped from river boats to continue their voyage overseas. The experience with Russia, in 1856, had impressed upon the maritime nations of the world whose ships carried on the traffic with the Roumanian harbors, the importance of not allowing the control of the delta to pass into hostile or weak hands; the cost of the work of keeping the river navigable could be met by a tax on the sea ships using the channel, thereby relieving the riparian states and fluvial navigation from any direct share in the burden. In the case of the Danube, furthermore, the only transshipment ports were Galatz and Braila up the river and later Soulina on the Black Sea, so that it was essential to the life of the wheat export trade of the lower river that the waterway be kept open to sea-going ships. In the case of the Rhine the Dutch and Belgian ports supply transshipment facilities on equal terms to all vessels. The river is kept in navigable condition for Rhine boats at the expense of Holland and the great growth of trade shows clearly that no serious impediment has been placed in its way through the practical necessity of transshipment at the mouth of the river. Rottendam and Antwerp, furthermore, have a heavy traffic in and out by railway and water other than the Rhine. They are great collecting ports from which regular lines of steamers radiate all over the world and this in itself constitutes a substantial advantage to the Rhine commerce in general, since cargoes coming down the river can easily find their way at regularly appointed times to ports in the other continents. It would be a long while, if ever, before Cologne could develop business enough to induce the passenger and freight steamers which now call at

Rotterdam and Antwerp with their regular sailings all over the seven seas.

The cost of building and equipping docks sufficient to accommodate them would be in itself a very serious question. Consequently, the direct interest of foreign governments in Rhine navigation through the participation of their ocean going vessels in the trade is insignificant at the present time, nor it is ever likely to attain important proportions. The analogy of the Danube Commission falls completely when it is realized that the British up to 1914 had contributed much the largest share of tonnage on the part of the river controlled by the Danube Commission and that the share of the riparian states, Roumania and Bulgaria, was comparatively small.

The situation on the lower Rhine is paralleled upon the upper. The Swiss port of Basel was formerly the head of navigation upon the river and before the 19th century Basel boats and Basel boatmen had a share in Rhine commerce. Naturally their boats being built to carry goods on the shallow, rapid, uncertain upper river were not large enough to make it profitable to send them through to Holland, even had the existing organizations of boatmen's monopolies and transfer cities not added a legal to natural impediments to through traffic. A class of small vessels, however, the so-called *Lauertannen*, customarily passed down the river to the lower ports and Holland, without being required to halt at the transfer cities. These craft recall the broadhorns of the early Mississippi. They were intended to be taken apart at their destinations and the planks offered on the market as rough lumber. They were held together by wooden pins, but nevertheless succeeded in making the journey down the river past the rapids.¹

¹ Eckert, *op cit.*, p. 118, *Du Regime Juridique des Cours d'Eaux de l'Europe Centrale*, *Revue du Droit International*, vol. 45, p. 288.

Navigation left the shifting channel on this stretch of the river for the rails with the construction of the Strassburg-Basel railway in 1842 and the Baden railway in 1846, but the success of the canalization of the river to Strassburg and the improvement in the channel resulting from the works undertaken by the Alsatian and Baden governments with a view to preventing the flooding of riparian lands, encouraged an attempt to start navigation on the 80-mile stretch between Basel and Strassburg. In 1904 the first attempt was made to send a tug towing a coal-laden barge through to Basel. They arrived safely, but the barge was lost going down stream. The possibility, however, was proved and a steady traffic began which had increased to 4200 tons in 1907, to 40,000 tons in 1909, and to 72,000 in 1912.¹ The port of Basel, however, depends upon action of the riparian states, now France and Baden, for the construction and upkeep of the navigable channel, which would make it practical to carry bulky articles through to the Swiss market. If Basel is to be an important Rhine port, barges large enough to economically transport coal from the Ruhr must be able to come through without breaking bulk. This means that the present 6-foot channel to Strassburg must be continued to Basel at an estimated cost before the War of \$6,000,000. If this were done the leading Swiss authority, Mr. Gelpke, claims that vessels of 2,000 tons could go straight through to Basel. There would be no advantage to either France or Baden, the riparian states, to spend this money and take on in addition the annual cost of upkeep. Germany as a whole might gain through the advantageous route for the transport of Ruhr coal, thus enabling competition with the Sarre Basin and with coal

¹ R. Gelpke, *The Free Rhine*, p. 6, Du Regime Juridique des Cours d'Eaux de l'Europe Centrale, *Revue du Droit International*, vol. 45, p. 271.

brought over the French railways or canals; but France has no economic reason to help the development of a harbor in competition with her own Strassburg, or to encourage a commerce which would also be in competition with coal owned by her subjects or in the French-controlled region of the Sarre. The old conflict has arisen over the practicability of the improvement of the river as against a canal from Strassburg to Basel. From the Swiss side it is vigorously urged that unless the river is kept open for large vessels, Strassburg will become a transfer port for all goods bound to or from Basel by way of the Rhine. Through port charges and canal charges over which the Swiss would have no control and in respect to which they could claim no rights on the basis of freedom of navigation, the control of Basel-Rhine commerce would be entirely in the hands of the power holding the port of Strassburg. The advantage of water navigation would be much more than overcome by the smaller loads in the canal boats to which river boats must transfer cargo, and the expense and delay in transshipment at Strassburg.¹ Prussia, and through the great Prussian interest in the new German Republic, the German government is, however, interested in securing the best possible conditions of navigation up to the Swiss border, especially now that Strassburg is in the hands of the French, so that there is no advantage to Germany in maintaining the head of navigation at that point. On the other hand, there appears to be no reason why France should spend the large amount of money necessary for the improvement of the river and instead of gaining, lose by the expenditure. The Rhine-Rhone canal from Strassburg can be utilized for the purpose of supplying navigation to Basel and improvements on that artificial waterway will benefit the interior of France as well as

¹ Gelpke, *op. cit.*, p. 9.

Switzerland. The advantage of being the head of navigation on the river and a transshipment point will be retained in Strassburg.¹

Another important consideration enters into consideration of this question, that is, the utilization of the river for electricity. Electric developments are a new phase of the problem of the use of the river and the interests of navigation and electricity must be reconciled. Navigation is a general interest common to all the riparian states and, while as has been shown in the case of Basel, and on the Dutch Rhine, a situation will frequently arise in which it is to the advantage of a lower state not to encourage navigation or a certain kind of navigation, towards an upper state, the interest of the riparian community as a whole as against the interest of special members, will be to keep the stream in the best possible condition for use as a highway of commerce. On the other hand the use of the water as a motive force, the only important use of the Rhine other than for navigation, is of local interest and here the advantage to the local state of proper utilization of the fall of the river may conflict sharply with the general interest of a clear highway for navigation. Realizing this conflict, the negotiators of the Rhine treaties have always provided that mills and other structures in the bed of the river should not interfere with navigation. They have left, however, to the governments, care of the common interest subject only to the requirement that before any work was begun the Central Commission should pass upon it in the common interest. Since the beginning of the century and especially since the first decade, the improvements in the generation and transmission of electricity have given a great impulse to the use of water power for this purpose. The comparatively uniform flow of the Rhine and its rapid fall

¹ *Travaux du Comité d'Etudes*, vol. i, p. 272-3.

at several points, make power development appear very possible, and there are few regions in the world which would furnish a better or closer market than the populous industrial cities of the valley.

On the upper Rhine not far from Basel the question has been under consideration since 1892 and a plan for a hydro-electric plant submitted to the governments of Alsace-Lorraine and Baden in 1902. It would include a dam across the river with a canal and lock 270 feet long and 75 feet wide. The plant should produce, when fully developed, 90,000 h p. The plan was almost wholly supported and encouraged on the Alsace side. The company which was organized to undertake the work was financed principally by the purchase of shares by the Alsatian cities of Mulhouse and Strassburg and by Alsatian banks and manufacturers. A Berlin electrical company and a Zurich bank owned the rest of the stock. There was no direct participation of Baden or subjects of the Grand Duchy in the enterprise. The two governments finally came to an agreement on the matter, and it was submitted in 1907 to the Central Commission which finally approved the plan under certain conditions in 1910. Prussia and Holland, backed up by the other riparian states, doubted the sufficiency of the locks proposed to handle the traffic of the future upon the river and demanded that the two riparian powers undertake to assure their enlargement when demanded by increased traffic. A commission of engineers to pass on the probable traffic requirements of the river was also agreed upon and the two states promised to enlarge the lock when necessary. Switzerland was not represented on the commission and had therefore no voice in the decision of a question so vitally concerning her port. Her interest, however, coincided with the lower Rhine states, especially Prussia and the position which those states took in the dispute in the Central

Commission foreshadows their probable attitude in the event of any further projects for the development of power on the river at the expense of navigation.¹

The riparian states continued to bear the burden of the upkeep and improvement in the river. The expense of adding to the port equipment also has been heavy and has been a charge on the governments, on cities and on private individuals. A large sum of money must annually be spent for these purposes. For the year 1909 the reports of the Central Commission show that 5,588,863 marks were expended on channel upkeep or improvements, 8,410,796 marks on harbors; for 1910 respectively, 5,907,045 marks and 8,018,107 marks, for 1911, 5,708,419 marks and 9,392,328 marks, for 1912 4,780,290 marks and 7,900,522 marks.

Work interesting more than one state was agreed upon between the governments, the respective share apportioned, and the riparian community interfered only so far as the Central Commission was entitled to insist that the projected work should not hamper navigation.²

A broadly conceived plan for the improvement of German rivers was contained in the act of the Reichstag of December 24, 1911. On account of the opposition of German land owners to the Prussian policy a century old, of fostering commerce by abolishing tolls on waterways, the new act made provision for the payment for the works by the navigation interests, at least in part.

The law created stream unions on the Rhine, Weser and

¹ Protocols of the Central Commission, *Rhein Urkunden*, vol. ii, p. 250; Langemans, *op. cit.*, No. 1041. *Travaux du Comité des Etudes*, vol. i, p. 301.

² Treaty between Prussia and Hesse, 30 June, 1884. *Rhein Urkunden*, vol. ii, p. 284; Baden, Bavaria, and Elsass-Lorthingen, 28 Nov., 1901, *ibid.*, vol. ii, p. 469 to create and maintain a channel 6 feet deep, 260 feet wide to Strassburg, Kehl and the two states chiefly interested, Baden and Elsass, were to pay 90 per cent of the cost.

Elbe composed of all the riparian states, but it extended the conception of the unity of the riparian community by including in it the principal tributaries in each river system. As an administrative agency there was set up a commission composed of representatives of the States and a committee to be drawn from the representatives of commerce, industry and agriculture, the river ports, and organizations of those concerned in navigation. The laws of the different states were to determine the method of election of members of the council and the proportionate representation of each interest. In fixing the number of votes in both committee and commission the relative importance of the navigation interests of each state were considered. In the Rhine Commission, Prussia had 8 votes, Baden 5, Bavaria, and Hesse each 4, Wurtemberg and Alsace-Lorraine each 3, and in the committee, which was composed of 92 members, 40 were Prussian, 16 elected from Baden, 10 each from Bavaria and Hesse and 8 from Wurtemberg and Alsace Lorraine. The division of votes between Baden and Alsace-Lorraine is not as unfair as it might appear, since the Neckar in Baden is included in the jurisdiction of the commission, and Wurtemberg, while not touching on the Rhine at all, is riparian to Lake Constance, to be included in the Union, and to the tributary streams. The committee was to act generally in a consultative capacity, the real administrative authority was the commission. The most important duty of the commission was the determination of work to be done and the fixing of tolls. The statute itself set forth in a general way the improvements which were to be carried out and fixed a maximum for the tolls, but other works might be undertaken, other tributaries of the river included in the jurisdiction of the commission, or that jurisdiction extended further up the tributaries included by the act and the maximum tolls might be doubled, but in

all such cases a majority of $\frac{2}{3}$ of the votes, both in the committee and in the commission were necessary. In this instance, the committee acted as a real administrative authority. Tolls were to be laid only upon goods, not upon vessels, and the act authorized the creation of 5 classes of goods but required that coal and ore should always remain in the lowest class

As the Rhine system included the whole river from the head of the Lake of Constance to the Dutch border, it was evident that the consent of Switzerland would be necessary to put the act into effect in that part of the river most needing correction, while the right of Dutch vessels under the Treaty of Mannheim to be free of all tolls on the river would create very serious practical difficulties in an attempt to carry out the act. Holland and Switzerland would not go along with the Empire in this plan, so the Rhine Union never functioned, and Austria, whose boats and merchandise enjoyed by treaty, freedom from tolls on the Elbe, blocked the Elbe Union, so the attempt to reverse the Prussian policy of the early nineteenth century had little success.

By the Treaty of the 10th of May 1879,¹ between Baden and Switzerland, navigation on the river between Basel and the Lake of Constance was regulated according to the principle of the Treaty of Vienna. Navigation and commerce on the Rhine was made free for everyone and the exclusive right of certain corporations, one Swiss and one German, for navigation on certain parts of the river were abolished. No common police regulation was established, but the treaty provides that the police regulations made by the two states shall be identical where this is necessary. No common control of breaches of the police of the river was set up except that the states agreed that any person who committed such acts should be given up by either state to that

¹ Martens, *N. R. G.*, 2nd ser., vol. ix, p. 593

in which he was punishable. Tolls were to be exacted only for the use of port appliances and other services to navigation and could only be sufficient to meet the cost of construction and maintenance. Each state is free to undertake any construction it pleases in connection with the river, subject to the requirement that the work shall not injure navigation or the banks owned by the other state. As there was no joint authority, the only means of enforcement of this provision was contained in the agreement by either state to show the other the plans for any new construction, so that objections could be presented before the work was begun.

CHAPTER VI

THE WORLD WAR AND THE PEACE

THE active hostilities in the World War did not sweep over the Rhine as they did over the Danube, but an acrimonious dispute over the right of transit through the Netherlands arose after the occupation of Belgium.

In the month of November, 1915, the Allied ministers at the Hague called the attention of the Dutch Government to the very great increase in the import of sand and gravel from Germany to Belgium through the Rhine and down the waterways and canals crossing Holland, to Antwerp and Ghent. This material was peculiarly suitable for making cement blocks, used in such great quantities in the German trenches and in the fortifications of the captured cities. The Dutch Government brought the matter to the attention of the German Government and in February 1916 warned Berlin that it would require from any boat crossing the border a certificate by the competent German authority, that the cargo was not destined for military works. On the third of April the German Government replied that as there was a sufficient quantity of gravel and broken rock in Belgium for military works, it would not discuss the question of law involved in the refusal of the Dutch Government to allow free transit and was ready to give the certificates desired by the Dutch Government. The British and French ministers at the Hague continued to protest against the large amount of gravel and sand still crossing Holland despite the certificates, and expressed doubts as to the honesty of

the German Government. The Dutch evidently had their own doubts as to the use of the cargoes when they reached the occupied territories, whatever may have been the good faith of the authorities in Germany in granting the certificates, so by a note of the 26 of May 1916, they warned the German Government that they would be obliged shortly to fix the monthly quantity which would be permitted to cross their territory unless the German Government present figures showing the amount of material that it needed for non-military purposes; and as no satisfactory response to this request was made and the complaints of the Allies against the increasing amount of gravel continued, the Dutch Government limited the total which could be transited to 75,000 tons a month. This allowance would be more than twice the average monthly importation into Belgium from Germany, France, and England during the years 1911-12-13.

The German Government thereupon sent an officer to the Hague to explain the need for the transited materials for the construction of roads, railroads and canals as well as for houses which had been destroyed during the invasion, and bomb-proof shelters against air raids for inhabitants of the occupied territory. He estimated that a monthly importation of from 400,000 to 500,000 tons would be required. The Dutch Government was not satisfied with this statement and with the permission of Berlin sent two Dutch engineer officers into Holland personally to examine the need for sand, gravel and stone for non-military purposes. They reported on the 12th of September 1916, showing the great extent of the work undertaken by the general government in Belgium. Roads and railroads were in the course of a complete reconstruction and improvement. Canal embankments and landing places were being constructed. Bridges which had been blown up during the war on a large

scale, were being rebuilt and improved, so that the works of this character would account for all the sand and gravel which had crossed Holland and a considerable amount more would have to be shipped in to enable the continuation of the work until the end of the current year. The Dutch Government thereupon decided to allow free transit on the condition that each shipment be accompanied with a declaration of the use to be made of it by the German military authorities. The matter was, however, far from settled. The British minister continued, during the fall of 1916, to complain of the passage of the sand and gravel which they still had reason to fear was being used for military purposes. They were not satisfied with the report of the Dutch officers and submitted a report made by the chief of the French Bureau of Roads and Bridges, showing that there was no necessity for any importation into Belgium of these materials for peaceful purposes since a very small proportion of the product of the Belgian quarries before the war would be sufficient to meet all such requirements. These quarries were being worked, as is shown by the report of the Dutch officers themselves. Consequently the Allies protested against the continued transit on the grounds that it was not necessary for peaceful purposes and that the amount that had been brought in already was much greater than was necessary for the work done.

The Dutch Government contested the accuracy of the French report, particularly as it did not take into consideration the wear and tear consequent to the war and the fact that roads and railways had in many cases been entirely rebuilt in the German method, thereby necessitating the use of unusually large quantities of new material. Nevertheless that government was again disturbed by the very large quantity of material taken across their border and in July 1917, warned the German Government that according to

their calculations, more than enough sand and gravel had been brought in for civil purposes for the year, so they would stop all transit from the first of August except such cargoes as were brought in for special work approved by two Dutch officers on the spot.

The German general government in Belgium protested. A carefully prepared statement of the needs for the coming year was submitted and a new investigation in August 1917 was made by the same two engineers. As a result of information so obtained, the government of the Hague replied that more than enough sand and gravel had already crossed Holland to meet all reasonable civil needs for the year, but that they would permit the transit in the months of September and October of the quantity necessary for road work and other peaceful purposes during the three first months of 1918. This quantity was estimated as one-fourth of the total needed for a year, minus the excess which had already been brought in during the year 1917. Its transit was permitted because ice might stop navigation during the winter, so material had to be on the spot for winter and early spring work.

The protests of the English minister continued and a new point was brought up in his note of September 10. It appeared that a large quantity of Dutch sand was being exported into Belgium and the British minister protested that it would be equally objectionable to permit the export of Dutch sand and gravel as to allow the transit of German.

Another troublesome question had arisen in respect to the transit to Germany from Belgium of metals and coal. The Dutch Government had early required certificates of a Dutch Consul in Belgium to accompany every cargo exported, that the goods were neither requisitioned, booty of war, or military supplies, but maintained that it was bound by the Rhine treaty to permit the shipment of all other

goods which it could not clearly show were being shipped, not in commerce, but for military purposes. This position was strongly objected to by the British who requested the Netherlands Government to insist on certificates of peaceful usage for all shipments of coal, metals, or minerals, just as for sand going the other way, and attention was called to the large amount of these materials which had been sent to Germany from Belgium. This the Dutch Government refused to do. They maintained that there was a distinction between the sand and gravel and these shipments from Belgium because in the case of sand and gravel the quantity sent in and the conditions of shipment were such as to raise a reasonable presumption that it was being used for military purposes, while no such presumption was apparent in the other case. The British Government on October 22, 1916 took the position that the use by Germany of Dutch waters to transit sand and gravel into Belgium or to take materials which could be used for military purposes from Belgium to Germany was in effect an advantage given to Germany, since it relieved the strain upon her own means of communication and therefore, that any transit of the character described was an unneutral act. Finally on June 2, 1917, the British minister warned the Dutch Government that if the transit of scrap metal from Belgium were not stopped, Great Britain would cancel certain facilities provided at Halifax in case of the shipment of metal cargoes to the Netherlands Government and furthermore that they would not approve certain shipments to Holland of government goods by a Dutch ship from New York. Holland vigorously protested against this position, but on the 11th of June informed the Minister that she would prohibit the transport of metals, since the German authorities in Belgium had commanded their requisition, and the British Government stopped the carrying-out of its threatened measures of retorsion.

The question was not, however, finally settled, but soon presented itself under another form. Two cargoes of lead were sent from Belgium to Germany and on protest of the British authorities the Dutch Government replied that this lead had been smelted in Belgium from ore brought from Germany, so that it could not possibly be treated as captured or requisitioned goods. They promised, however, that any ore sent from Germany in the future would be tested and only the amount of metal which could be extracted from the quantity of ore shipped in would be allowed free transit back.

The British Government, on September 20, 1917, warned Holland that, if the transit of sand and gravel down stream and of metals up did not cease completely and at once, they would stop the transmission of Dutch cable messages. Had the Netherlands Government not permitted the transit of sand and gravel the German defenses on the western front could never have been brought to their present strength. The embargo on cables was finally put into effect.

The Dutch complained to Berlin in November, 1917, that strong evidence had been brought to it that the transited sand and gravel had been used for military purposes and requested permission to send a new commission of three experts to investigate. Berlin replied that it had expressly ordered that none of this material be used for military purposes and that it had not been so used, but that all sand and gravel necessary for the army had been brought into Flanders by another route. In view of the existing military conditions, they could not permit the investigation requested by the Dutch Government which thereupon declared that it would not allow any further transit until it was convinced by the report of its own commission that the transited materials were being used for solely non-military purposes.

The German Government found itself still unable to con-

sent to the investigation and on Feb 27, 1918, declared itself ready to cease these transports across Holland provisionally. The position of the Dutch Government was satisfactory to Great Britain and on February 9, the British Government assured the Dutch minister in London that the cable embargo would be withdrawn

Holland throughout maintained the principle which she enunciated at the beginning of the controversy, that she would not refuse transit to goods to be used for a peaceful purpose, but that as a neutral, she would not allow her territory to be used for the shipment of goods from Germany to the occupied territory for military purposes, or vice versa. She successfully opposed the British contention that Dutch sand and gravel ought not to be exported to Belgium and asserted that she was under no duty to prevent the export of military supplies to either belligerent. In view of the great use made by the Allies of American munition factories, it was impossible for Great Britain to continue this protest. The Dutch Government relied on the conventions of the Hague of 1907 and upon the Rhine convention in support of its position. The Rhine conventions stipulated for the free use of the river for commercial purposes and the treaty of Mannheim had extended the right to the waters uniting the Scheldt and the Rhine. Therefore, even during the war, Holland, as a neutral, was compelled to permit transit of goods for commercial purposes to or from a belligerent, along the water courses covered by the convention, but this duty did not interfere with her duty as a neutral to prevent any unneutral use of her territory forbidden by the Hague convention.

Article 2 of the 5th convention of the Hague prohibited the passage of all convoys of supplies across a neutral territory and Article 2 made it the duty of the neutral to stop such convoys. Article 7, however, expressly permitted

passage in commerce even for articles useful to an army in campaign but the Dutch Government maintained that military supplies sent from a belligerent state to its army were not "in commerce" and were convoys. The word "convoys" should not be strictly construed to mean cargoes under military guard, but it was sufficient that the goods be owned by the belligerent government and sent to its armies. A guard in a neutral country would be unnecessary and a belligerent armed force could not be permitted to cross neutral territory, so that the word convoy was clearly given a broad meaning in the treaty.

Where supplies, however, were sent for a non-military use into occupied territory, they could not be classed as convoys of supplies and this was especially true in respect to sand and gravel, since by Article 43 of the 5th convention of the Hague on the Law of War on Land the occupying state was under a positive duty to assure the regularity and order of life in the occupied territory. Means of communication were essential to an orderly civilian life, so that the German Government was under a duty to maintain and improve the roads, railways and canals of Belgium. By permitting transit the Dutch Government was merely aiding it to carry out this clear international duty, so that its action could not be considered unneutral. The Dutch Government had prohibited the shipment of dredges from Germany to the Belgian ports on the North Sea, because these ports were used for exclusively military purposes and it also refused to allow road material to transit across its territory for work on the roads in the military front which were clearly for military objects. It also distinguished between railroads for military purposes and those which were primarily civil. It never, however, fully answered the British charge that the railways and roads in Belgium were in fact all essentially part of the military equipment of the

German armies and that this fact was made clear by their being rebuilt on the German standards, so that they physically became part of the German system.

Clearly the distinction between military and non-military uses is extremely difficult and open to much question, especially where the materials could be used at the same time for peaceful and military purposes and where they were mingled at the great ports of Antwerp and Ghent with similar materials brought directly from Germany or originating in Holland, so that it was practically impossible to follow any one barge load to its destination. The probability must also be considered, that whatever had been the intended use of the materials when they crossed the frontier, they would be, if a necessity arose, used for the pressing needs of the army in control of the territory.

Germany maintained throughout that Holland had no right to stop the free passage of merchandise under the Rhine treaty, regardless of the use to which it was to be put, or whether the government was its owner. Answering the argument based on the 5th convention of the Hague, their law officers gave a strict interpretation to the word *convoy* and maintained that it meant materials of war under official guard. All other supply is commerce, regardless of whether it is owned by and comes from a belligerent state. Germany also claimed that the 5th convention of the Hague did not apply in the present war, since it had not been ratified by Great Britain, but the Dutch answered that although this was so, the convention codified what they regarded as the existing rules of international law, which would be applied by them as the law and not merely as a conventional obligation.

The British Government at first appears to have taken the position that the transit of sand and gravel was not illegal, if it could be proved that it was being put to peace-

ful purposes, but subsequently it took the broad position that a neutral cannot allow a belligerent to make use of its territory to aid its military movements, and that the relief of German means of communication through the Rhine transit constituted an effective help to Germany. Article 7 of the 5th Hague convention does not apply to a case where a government owns the goods and where it is sending the goods for its own purposes to its army in campaign or to occupied territory. That provision applies only to goods which have been purchased by a belligerent government from individuals and which are being shipped to that government. Such goods the neutral is not obliged to stop, but shipments of the nature of those concerned in this controversy are not in this class.

The point was further made that as the Belgian quarries were being operated by prisoners of war, it would be a breach of the laws of war to use the products for military purposes, so that it must be presumed that the stone from these quarries was being used for civilian purposes, especially the repair of roads and railways. The Dutch Government replied to this contention that it was not under any obligation to enforce the observance of the rules of war by a belligerent, nor under any obligation to inquire into the use made by a belligerent of materials over which it had no control, or which it was not under any obligation to control; such as the sand sold to the German army by Dutchmen. The only obligation upon the neutral was to take all reasonable means to assure a peaceful use of the materials whose peaceful use it was bound to guarantee.

Neither party surrendered its legal point of view and in one of their last notes to Berlin, the Dutch Government reaffirmed their intention to withstand the British pressure to prevent any shipments of sand or gravel. Holland finally stopped transit of cement making materials in face of

the refusal of the Germans to permit inspection which would assure the Dutch authorities that the transit material was being used for peaceful purposes. The notes clearly show a distrust of the assertions of the German authorities and that the government of the Hague refused to accept at their face value the German declarations.

The question of law left open by the notes, may come before the committee formed to redraft the Hague conventions in respect to war on land. The great value of the work of such a committee in codifying the existing law is emphasized by the use which the Dutch Government made of the Hague conventions as the basis of its position. It was able to point to a codification of the law which had been accepted by the experts and plenipotentiaries of the great majority of the countries of the civilized world. Each belligerent as a result, instead of disputing with the Dutch minister over what the law was, could scarcely avoid accepting the code as a basis of their argument. The principal question involved was that of the interpretation of the conventions and the difference of opinion possible on the words of the convention did not show that it was useless, but only that it required revision in the light of experience. This is not a criticism of the draftsman of the convention, it is no more than proof of the necessity for continued work on the rules of international law based on experience and particularly of the need for a study of these laws and their revision in the light of such an experience as the world war.¹

¹ For the documents in the transit matter see The Dutch White Book "Doervoer door Nederland uit Duischland naar Belgie en in omgekeerde Richting, 1917 and 1918, and the British papers, Correspondence respecting the Transit Traffic across Holland of Materials susceptible of use as Military Supplies, Misc. No. 2, 1916 cd 8915 and Misc. No. 17, 1917, cd 8693. See article by Charles Vissher, *Revue generale du droit international Public*, 1919, p. 142. *State Papers*, 1917-18, vol. 222, p. 411 ss.

The treaty signed at Versailles, June 28, 1919, made profound changes in the regime of the Rhine. France became again a riparian to the same extent as before 1870, the port of Strassburg and its growing commerce was again under the tri-color. The treaty deals with the Rhine in Articles 354-364, inclusive. The convention of Mannheim remains in force except as modified by the treaty, until it is revised by the new Central Commission. The new commission consists of 19 members, 4 representing France who, in addition, appoints the President, making 5 in all, 4 for the German riparian states and 2 each for Switzerland, the Netherlands, and Belgium, and the 2 nonriparian states of Great Britain and Italy. The headquarters of the commission is moved to Strassburg. Ships of all nations and their cargoes are given the same rights and privileges as vessels of the Rhine navigation and their cargoes, and none of the provisions of the convention of Mannheim relating to licensing of vessels or crews may interfere with free navigation of non-riparian vessels or crews on the Rhine and waterways to which that convention applies, which will include the Belgian and Dutch waterways connecting with the Meuse and Scheldt. The Central Commission shall decide on the steps to be taken to insure that non-riparian vessels satisfy the conditions of the general regulations applying to navigation on the Rhine.

The dispute over the electrical rights on the upper Rhine was settled by permitting France to take water from the river for navigation or irrigation canals or for any other purpose and the exclusive right to all power derived from any works of regulation on the river, subject to the payment to Germany of the value of one-half the power actually produced, either in money or in power. This payment must take into account the cost of the works necessary for producing the power and in default of agreement

it must be fixed by arbitration. France was given the right to execute on the German side all the necessary works. Belgium was also permitted to take water from the Rhine to feed the Rhine-Meuse navigable waterway which it was authorized to construct within a period of ten years from the Ruhr region. No increase in tolls "formerly levied under the convention in force" could result from the works authorized and all schemes must be laid before the Central Commission, so that the Commission could assure itself that no toll was to be laid and that the navigability of the river was not interfered with. Germany bound herself not to undertake or allow the construction of any "lateral canal or any derivation" on her side of the river opposite France and also agreed to permit the French to do necessary work on the German side. The same rights were to be given Switzerland, with the approval of the Central Commission, on her demand, for the part of the river forming her frontier with other riparian states. If this provision comes into effect, it will refer only to the German state of Baden and the Austrian territory on the Rhine above Lake Constance. Subject to these provisions no works may be carried out in the channel or on either bank of the Rhine on the Franco-German boundary "without the previous approval of the Central Commission or its agents." France was also given the option of substituting herself for the government of Alsace-Lorraine in respect to agreements with Baden concerning Rhine works or of denouncing these agreements within five years and she had the further option of carrying out works recognized as necessary by the Central Commission "for the upkeep or improvement of the navigability of the Rhine above Mannheim."

Germany agreed furthermore to consent to the extension of the jurisdiction of the Rhine Commission to the Moselle below the French frontier, to the Rhine above Basel to the

Lake of Constance, with the consent of Switzerland, to lateral canals and channels which may be established either to duplicate or to improve naturally navigable sections of the Rhine or the Moselle, to connect two naturally navigable sections of these rivers, and also any other parts of the Rhine river system which may be covered by the General River Convention provided for in the Treaty. This general convention was to be drawn up by the allied and associated powers and approved by the League of Nations in respect to the German rivers and the Danube which were declared international by the treaty. Provision was also made in the treaty for allocation to France of a proportionate number of Rhine vessels and of docks and warehouses owned by Germans in Rotterdam.

The two principles of the equality of states in the commission and of restriction of control to the riparian governments, which had universally been applied to international streams, were abandoned for a new plan of weighting the votes of the states represented in the Central Commission, and admitting non-riparian governments. The Dutch Government was opposed to the inclusion of non-riparians in the Commission. It said that politics had been kept out of the Commission and if non-riparians were admitted, there was danger that other interests than bettering navigation facilities would affect decisions.¹ The analogy of the Danube Commission cannot fairly be urged for this last innovation. That commission had jurisdiction only over that part of the river between the sea and those ports which were the transfer point to sea vessels, therefore over what was in effect in point of character of navigation an extension of the sea and principally used by seagoing

¹ Report of Foreign Minister to States General, 1919-20; (Orange Book, 1910-20), Memo. 26 of March, 1919.

ships. A corresponding local jurisdiction in the Rhine Delta would be from the North Sea to Rotterdam on the Meuse, to Antwerp on the Scheldt, the trifling sea navigation to Cologne would not justify a comparison in this respect between the Danube to Braila and the Rhine to the ancient Roman Colonia. The European Commission, too, was not dependent on bank treasuries for its support or to defray the cost of its works. That was borne by the vessels and cargoes owned, not in the majority of cases, by riparians, but by foreigners. The Commission, therefore, levied its taxes largely on the property of the nationals of the states represented on its board, so that the interests actually concerned were those which fixed the tolls. The large Greek interest was, in 1856, represented by Turkey, since the vessels were owned largely by Greek subjects of the Sultan, and since the Greek Kingdom has increased in wealth so that its own subjects are heavy owners of vessels on the Danube, the principle of fair treatment for all flags has been firmly established.

The reason for the number of votes on the Commission is apparent and brings out the political as opposed to the economic side of the Commission. Four German states, Prussia, Hesse, Bavaria, and Baden, must each have a commissioner because of their financial and political autonomy in river affairs; and it was desired to give France an equal representation with the total from the German side. Holland, clearly, should have at least half as much voting strength as Germany and France, and when she was given two votes, the principle of equality of representation made it necessary to allow the same proportion to Belgium, Switzerland and the two non-riparian states. No good reason can, however, be given for the French presidency of the Commission. The French interest, based on bank ownership, is small compared with the German, or with the Dutch,

if density of commerce be considered; and based on imports and exports of Strassburg it is insignificant compared with the traffic in German ports or with that over the boundary at Lobith. In 1912, the Strassburg total was 1,668,578 tons as against a total to and from German ports, including Strassburg, of 59,850,502 tons, about 2.7 per cent, while over the boundary from or to Holland and Belgium passed 34,143,243 tons. Even these figures do not truly show the relative position of France to Germany and Holland, and Belgium also, in view of the importance of Antwerp as a seaport for western Germany. For these countries the Rhine is an essential artery of commerce, especially as a means of transport of coal from the Ruhr fields, of overseas iron ore to the foundries which at the coal fields transform it into finished steel, and of foreign bread-stuffs or petroleum into the industrial region of the valley and the region reached by tributaries or canals—for France and Switzerland, it is of minor importance.

The future of Strassburg's port may even be questioned. It is not impossible that, as in 1816, the fine French systems of canals, now enforced by railways, with the new commercial relations which necessarily will follow the flag, will direct its trade into the interior and make Le Havre or Marseilles instead of Rotterdam the seaport for the grain imports needed to cover the demands which cannot be satisfied by French-grown wheat, and for the potash exports now going down the river. The Ruhr coal may remain the only support as it is now the chief support, of the river traffic of the city, and if coal from the French-controlled Sarre basin can take its place there will be a strong and perfectly understandable national interest in assuring this advantage to France.

Consequently, the preponderance on the commission is vested in a government whose interest in navigation is at

least apt to become secondary to its interest in power for use on its own territory. Individual Frenchmen will have strong reasons for developing electrical plants on the great river bounding Alsace, but it is doubtful if the interest of individual Frenchmen in the betterment of Rhine navigation will be, from a financial point of view, equally strong. The French electrical enterprises, it is true, must pay Germany either in money or electricity, the value of one half the power generated, but they will remain French enterprises whose profits will benefit Frenchmen and whose product will probably be chiefly used in Alsace, whence, even under German sovereignty came the demand for the power. If the river be fully utilized for electricity, besides, an enemy to the river coal trade of Strassburg, more effective than the Sarre mines, will arise, and the Rhine itself as a source of power and heat may reduce its own value as a pathway for the coal which formerly drove factory machines, lighted cities and heated homes in Alsace.

Whether the opening of a river to vessels of all nationalities is apt to have any substantial effect, may well be doubted and whether, if it has, the result would be advantageous, is very questionable. Whether freedom of river navigation to all flags is advisable depends on whether the practical value outweighs the consequent interference with the individual rights of the riparian states to regulate their interior navigation.

The problem of freedom of navigation to all flags of international rivers may be divided into two clearly marked parts, freedom for seagoing ships to sail up to the river ports where they transfer to and from river boats, and strictly fluvial navigation. So far as the first is concerned, the river should, for this purpose, be treated as an arm of the sea, for the second, the fluvial community should have full power of disposition. The distinction between rivers

and the open sea should be kept in view. The open sea is a roadway between practically all countries, which all are interested in keeping open because their trade passes over it. A river is a pathway of trade only to the states bordering it and can be of interest only to them and the countries with which they traffic. Navigation, in and for itself, is worth while only to a few yachtsmen; it is because they can carry cargoes and passengers that ships are sailed. The right, therefore, to navigate a river is of value only if the riparian state or states permit ships to trade at their ports so that freedom of navigation of a river implies freedom to take part in commerce at the river ports. Many writers, Fiore, for example, urge that all rivers, even national rivers, be treated as arms of the sea, and in consequence be free to any vessel, but what would be the value of such freedom on the Mississippi for instance, unless the United States was obliged to permit foreign ships to land and take on cargo at New Orleans, or St. Louis, or Memphis on an equality with American ships? Should an English company, for example, be free to establish a line of boats under the English flag, subject to English law, between New Orleans and St. Louis or Pittsburg, and to demand equal treatment with American boats? If this equality was not their right, they could do no business on the river without the consent of the United States and their freedom of navigation would be illusory.

If this be true in respect to national rivers, why should not a corresponding limitation hold good as to international rivers? If the Rhine states, for example, choose to retain for themselves or their subjects the monopoly of river transportation, no interest of the world at large is at stake, unless it be that a fair and free opportunity be assured to the upper riparians of access to the world sea. In the case of the Danube in 1856, a sort of international guar-

dianship for the infant state of Roumania, was established, and the means of transporting goods was supplied by the countries interested in developing Roumanian commerce. This interest once established, remained in force, but in no case has a non-riparian country acquired any position in navigation on a river running through countries having the capital necessary to supply their own boats and the experience required to operate them.

APPENDIX I

ANALYSIS OF IMPORTANT RIVER TREATIES

Administration

The Danube

1856, *Treaty of Paris*. The European commission, composed of Great Britain, Austria, Russia, Turkey, France, Prussia and Sardinia, each with one delegate, to design and have executed [faire exécuter] works for the improvement of the mouths of the Danube up to Isakcha and the neighboring seas, the commission to fix tolls for these works.

The riparian commission, composed of Austria, Bavaria, Turkey, Wurtemberg, one member each, and one delegate approved by the Porte from Serbia and from Roumania.

It should: (1) Draft regulation of navigation police; (2) do away with impediments to the carrying out of the provisions of the act of Vienna; (3) plan and carry out works on the whole length of the river; (4) maintain navigation of the mouths of the river after the European commission has been dissolved.

It is expected that the European commission will have finished its work in two years and upon agreement to that effect by the powers the duties of the commission shall fall to the riparian commission. The Powers are each to have two boats on the lower Danube.

Public Act of 1865. Navigation under the administration of the inspector general and captain of the port of Soulina, named by the Porte and paid by it, but discharged only by the Porte on the request of the European Commission or the riparian commission or on discovery of breach of the regulation, or by agreement between the Porte and the European

commission. These officers are under supervision of the European commission in the administration of regulations. Merchant captains must obey them. The naval guard vessels act on the boats of their own nationality and the Turkish guard-boats as local power act on others

1871. Commission maintained and extended to Galatz, in complete independence of the territorial power. Roumania gets a representative. Powers to decide on or before expiration of the term about the extension of the commission. To draft regulations for the Galatz-Iron Gates stretch with the aid of the delegates of riparian states, regulations to be in harmony with those for the stretch below Galatz.

Regulations of 1882. Inspector of navigation, chancellor, supervisors of sections, captain of the port of Soulina and all their personnel are appointed by the European commission by majority and may be discharged by the commission. Inspector and captain of the port are directly under the authority of the commission and take oath to it. The commission controls directly the navigation tax office of Soulina; method of levying tolls may be modified by unanimous decision. Tolls may be laid up to Galatz.

Treaty of London, 1883. Commission extended for twenty-one years and its territorial jurisdiction extended to Braila.

Kilia arm. No effective control of the commission on the Kilia arm where both banks belong to one riparian. Where the Kilia arm is the boundary between Russia and Roumania, the regulations of the lower Danube [commission's regulations] to be applied under the supervision of Russian and Roumanian delegates to the commission.

The Elbe

1821, §30. Commission of revision of regulations to meet at a period stated and subsequently at periods to be fixed. To take up questions referred to it and complaints. Each state to send one delegate. The chairman to be elected. Each to appoint its own toll collectors.

1844. The Elbe toll courts are established with criminal

and civil jurisdiction over matters of navigation; execution of decisions is to be authorized in each Elbe state.

1863. One toll station at Wittenberg, the toll to be fixed, and only to be on boats passing through the toll district. Toll officials to be appointed by the various states at Wittenberg to be free to a certain extent from Prussian taxes and legislation as to personal status.

The Pruth

1866-1895 A mixed commission of riparians, Austria-Hungary, Roumania and Russia, created as an international authority to design and carry out improvements, draft and apply navigation tolls, draft police regulations. Commission to appoint inspectors to have authority over all flags, to be organs of the commission, and to supervise the works of improvement and assure the application of police regulations. Commission and its officers paid from tolls. Navigation and police regulations to be approved by the governments, who will aid the inspector in enforcement of his orders. A Roumanian post to be established at the mouth of the river, a Russian at an upper-river Russian port. Special agents designated for each country by local authority to act under the inspector. Toll collection is international and collectors take oath of office before the mixed commission. The toll collection to be under the control of the commission.

The Po

1849. A commission of five members is created, two appointed by Austria [including the president], one by each other riparian state. Decides by majority. Its duty is to watch over the river and direct improvements. Meets twice a year, examines river and determines necessary work; submits its proceedings to the governments. Superintends toll officers, mills, locks, bridges, etc., and everything else in regard to navigation under its control. The commission to correspond with the respective governments in regard to maintenance of the navigation conditions. Tolls are paid into its

own treasury and no restriction on spending them, but expenses in excess of the limits fixed must be approved by the governments. It appoints subordinate officials in proportion among the subjects of the contracting powers.

The Scheldt

1839. Common supervision of navigation and pilotage by commissioners of both parties. The regulations are to be drawn up by agreement of the parties

The Rhine

1804. The director general is appointed by France and the Arch-Chancellor, the Bishop of Mayence, for the empire. He takes an oath to the contracting parties. Four inspectors appointed, two by France, two by the Arch-Chancellor, to watch over the river and navigation and report on breaches of regulations. Receivers and controllers appointed by the local governments. All officers receive a percentage of the toll in addition to their salary. The boats and the toll stations have a special flag. An annual meeting of the commission at Mayence, to consist of the French prefect at Mayence and a commissioner appointed by the Arch-Chancellor and a jurist chosen by the two others to hear judicial appeals only. No change in the treaty without consent of both governments; but the director general assisted by one inspector from each bank may make supplementary regulations not to take effect if either government objects.

1831. The central commission meets annually at Mayence on July first. The president is chosen by lot. Each state has one commissioner. The commission has general oversight of administration, considers improvement and changes in regulations; suggests improvements in the river to aid navigation; decides appeals. Decisions are by a majority, but only effective when approved by individual states. The commissioners are agents of the states. An inspector is appointed to see that complaints by navigators are promptly settled and to call attention of proper authorities to irregularities and interference with navigation. He may appeal to the central com-

mission if the local authorities do not help him. The river is divided into four districts, as nearly as possible along the lines of political division of the states, with inspectors in each appointed by the local powers as supervising officials. Each state names its own toll officers and the toll organization has a special flag.

1868. The central commission, one commissioner for each state, meets annually, examines complaints, takes counsel on propositions of the governments for improvement of navigation, decide appeals for navigation courts; decisions by a majority of votes. Resolutions are only obligatory on approval by the governments. The river is divided into four inspection districts, as near as possible by the political boundaries of the states, with an inspector for each district, appointed and paid by the local authorities and with a right to hear complaints, make inspections and report to the governments affected. His duty is to inform the central commission if complaints are not remedied or suggestions to governments if his recommendations to local officials are not attended to.

The Congo

1885. An international commission for the navigation of the Congo was provided for. Each signatory and each subsequently adhering power to have one delegate, to be directly paid by their governments. Agents and employees of the commission to be paid from tolls. Members of the commission, their officers and archives are inviolable. Commission to be constituted as soon as five powers appoint delegates; to draft navigation, river police, pilot and quarantine regulations to be submitted to the powers for approval. The riparian authority to punish breach of the rules. Individual aggrieved by acts of the agents of the commission may apply to his consular agent who may bring a complaint before the commission who shall inquire into the matter, or if he thinks questions of law involved, he shall report to his government. Commission may fix pilot, tariff and navigation dues, collected by the international or territorial authority by whom established, and

may appoint officials for the service of navigation and its own employees. Riparian powers appoint their own special inspectors for their territory and pay them. International commission is independent of territorial authorities in the exercise of its functions. It may have recourse to war vessels stationed on the river; it may negotiate loans guaranteed by its own revenue by majority of two-thirds.

United States-Canadian Boundary Commission, 1909

To regulate the use of waters; six commissioners, three from each side, the three British to be appointed by the king on the recommendation of Canada. In case of an even vote in the commission, the question in dispute is referred to the governments and if they do not agree, to the Hague tribunal. They have exclusive jurisdiction and control over the waters under their jurisdiction but no further obstructions or diversions are to be permitted except by authority of the United States or Canada with the approval of the joint commission. Dams on one side which will raise water on the other, are not to be authorized without the consent of the commission.

Vienna, 1815

Regulation by a convention of riparian states who shall fix tolls by common consent which cannot subsequently be changed without the consent of all.

Institute of International Law, 1888

The riparian states to regulate the river in common. A riparian commission of one from each state. Decisions are by a majority. The president has a casting vote, but a decision does not bind a state whose delegates have formally opposed it. Commission plans and has carried out the works necessary for river improvement, draws up a tariff and navigation and police regulations, supervises maintenance of works, observance of regulations, names chief inspector and decides appeals. The inspector supervises the administration of police and river regulations. Local inspectors are named by states to serve under orders of the chief. The chief may ask the aid of local military posts.

*Improvements**The Danube*

1856. The European commission to design and carry out works for improvement of Danube mouths from Isakcha downward and neighboring seas. These works were to be paid for by tolls to be fixed by the commission. The riparian commission was to plan and execute works on the whole length of the river, but no power of laying tolls was given for this purpose and it was also given the power to maintain navigation of the mouths of the river after the European commission becomes dissolved.

Public Act, 1866. The European commission to remain without any interference in charge of the works constructed by it, to preserve and develop them. The commission or the authority succeeding it to design and carry out all works necessary for the improvement of the Soulina and St. Georges arms. Tolls were laid to cover the maintenance as well as the construction costs of the improvements. No construction in Soulina and St. Georges ports without the consent of the commission. The Porte to keep the banks from Isakcha free of constructions interfering with navigation.

1883. *The Kilia arm.* If Russia or Roumania undertake improvements in the Kilia arm in their respective territory [where the Kilia is a boundary between the states] the competent authorities to give notice to the European commission and submit them the plans to show that the works will not interfere with navigation of other arms and in case of dispute, reference to the powers. Works in the Tchatal Ismail to be continued by the commission, but if there is no agreement in the commission in regard to their extension, the matter to be submitted to the powers.

The Elbe

1821. Improvements are left to the states, but in case of different ownership of opposite banks either state may complain to the central commission against any works damaging its bank.

1844 The states agree to create a depth of at least three Rhine feet. The river to be examined by engineers of all riparian states jointly who shall then make recommendations. States on opposite banks should agree on plans of improvements before construction

1855. There shall be a regular annual investigation by the engineers.

The Pruth

1866-1895. The mixed commission to design and carry out improvements and to supervise the maintenance of works. The mixed commission of delegates of Russia, Austria and Roumania, was to put the Pruth into the best possible navigable condition. It was given the duty to design and carry out the necessary works for the improvement of the bed of the river and to establish the rates for the navigation toll to cover the cost of these improvements and their maintenance. Its inspector supervises execution of the works to see that they are constructed in conformity with the plans approved by the three governments, and to supervise the maintenance of the works of improvement and carry out the necessary work for that purpose. The works of improvement to be executed according to a general plan drawn up by the commission, but which, as well as the special plans and specifications, must be approved by the three governments. No work shall be constructed on either bank of the river even by the public authorities till after the plans have been communicated to the mixed commission and approved as not interfering with the works of improvement. Municipalities and rural communes building works of a recognized utility for vessels shall be authorized to take a toll not in excess of the service rendered to be approved by the mixed commission. 'Constructions interfering with navigation shall not be allowed.

The Po

1849. The commission directs necessary improvements and at their semi-annual meetings examines the river to de-

terminate the work necessary for the coming year and submits conclusions to the governments.

The Rhine

1804. Improvements to be made by the local authorities.

1831. Improvements left to each state. Engineers are to measure the river for toll apportionment which shall be made by the central commission.

1868. The states to carry out improvements. Governments of neighboring states or states on opposite banks to communicate projects to one another. Navigation not to be interfered with by mills, etc. Engineers delegated by the governments of all states to examine river and report to central commission.

The Memel

Treaty between Russia and Prussia. Improvements for navigation to be carried out on common account of both states, each to pay half. A commission of two members from each state, one technical, to supervise the work. Salaries paid by the appointing state, but other costs from a common fund. Materials, transport and the work to be by bids, the dates of closing of which are to be announced in nearby papers and churches. Bids to be open to subjects of each empire. Workmen to be drawn one half from each state; the pay to be fixed by the commission after hearing police authorities of each state.

The Congo

1885. Commission may decide upon works necessary to improve navigability and may come to an agreement with the riparian authorities. Where there is no sovereign power it may carry out the work itself.

Vienna, 1815

Improvements are left to each state. Regulations are to fix terms of cooperation between states owning opposite banks in case of projected improvements.

Institute of International Law, 1888

Each state appoints its own engineers. Improvement works are to be carried out by the states either directly or on the initiative of riparian commissions. A state is free to take measures it judges necessary for the improvement and maintenance of the navigability of its part of the river; but no state can undertake works which may affect common waters or interfere with navigation, against which the other riparian states have protested.

*Passage Tolls**Poland*

Russia and Prussia, May 3, 1815, [Art. XXIV Vienna] agreed that a toll may be levied on tonnage by consent of the powers which shall not be altered without consent and which shall be used only for the maintenance of navigation.

Austria and Russia [Art. XVI Vienna], the same provision.

Austria and Russia, 1818.—In Austria there shall be no toll, and no toll where the banks are common. In Russia no toll on the Bug river. Prussia and Russia, 1817.—The Vistula and Memel free of tolls. Austria and Prussia, 1817.—Rivers free of tolls. See German Constitution, Art. 54

Elbe

1821. Existing tolls abolished and general navigation duty substituted based on cargo and boats, to be divided among the states in a fixed proportion, and the toll stations fixed

1844. Tolls reduced and number of stations reduced.

1863. Tolls reduced and only one station on the river. The tolls to be divided among the states. The toll to be taken only on boats passing through the toll district at Wittenberg.

1870. The German statute stopped tolls and a lump sum was paid to certain small states to cover their share of the dues.

1871. Tolls in Germany and Austria-Hungary were abolished by treaty.

Pruth

1867-1895. Tolls abolished except a charge for the use of improvements to navigation by local communes, and river tolls fixed by the mixed commission to be used for improvements.

Rhine

1804. The toll fixed in the treaty supplants other tolls. The toll on boats to be fixed by their tonnage, loaded or not. Goods to pay according to weight and measure a sum fixed in the treaty at each bureau, of which there are to be 12. The toll is allowed for certain heavy goods and to be divided as fixed among the states. Profits are to go to a central treasury.

1831. Tolls to be fixed in accordance with the size of the boats and weight of the cargo for each stretch of the river. The number of toll stations fixed and the tolls collected for the account of the riparian states.

1868. Tolls abolished.

The Po

1849. Transit tolls abolished, but commission may fix a toll for the maintenance of navigation according to tonnage without regard to cargo which may be increased only by common consent. Tolls for the use of harbors and docks to be fixed by the commission. Navigation of branches free within contracting states and tolls equal to all boats.

Scheldt

1839. A fixed toll to be paid to the Dutch government on the maritime Scheldt. Waters between Scheldt and Rhine free and moderate tolls charged and to be the same to both countries. Tolls on the southern Scheldt not to be higher than the Mayence toll of 1831.

Danube

1856. Tolls to pay the cost of works on the river to be fixed by the European commission.

Zambesi

1891. No transit dues charged on shipping of goods; no

maritime or river toll based on fact of navigation or tax on goods on board of ship. Only tolls as an equivalent for services rendered in navigation, to be the same for all. Charges for the rights to be the same as for Congo.

Vienna, 1815

Tolls to be fixed by the Conference of riparian states and only changed by common consent. The officers to be as few as possible.

Institute of International Law, 1888

Tolls to be exclusively used to cover cost of maintenance and improvement. No transit tolls on goods or vessels. Tolls to be fixed by the riparian commission which also fixes the charges in the ports for the use of port equipment. No transit tolls to be charged on goods or vessels.

Congo

1885. Only tolls to cover expenses in the general interests of navigation including lighthouses, beacon and buoy tolls.

Tolls on the roads, railroads and canals shall be calculated on the cost of construction, maintenance and profits due and all persons shall be treated on the footing of perfect equality.

Navigation

Elbe

1821. Navigation is free in respect to commerce, but only for boatmen and vessels licensed by the riparian states.

1844. Free for ships of all nations; all navigation between Elbe ports reserved to Elbe vessels and each state may reserve cabotage, but Elbe vessels in regular routes may transport passengers and goods between ports in the same state.

Pruth

1866-1895. Navigation free and cannot be refused in respect of commerce, to any flag. Any captain or Danube pilot may act on production of his certificate. A special certificate may be given by the riparian state of domicile or by the in-

spector of navigation Boats must have a certificate for seaworthiness and boiler inspection.

The Po

1849. Navigation free and exempt of all burdens and not to be forbidden to any person whatever. All special rights to cease and no exclusive right to be given to any individual. The navigation of tributaries to be free

Rhine

1804. The river common between France and Germany in relation to commerce and navigation. Navigation to be regulated in common. Right of transfer of cargo at Cologne and Mayence preserved as necessary to navigation, but no other privileges allowed. Freight from Cologne and Mayence in the hands of the boatmen's associations. Special rights for boatmen to pass to the Frankfort fair without unloading at Mayence. Freedom of navigation does not apply to tributaries except that the Main to Frankfort is free to both Mayence and Frankfort boatmen.

1831. Navigation on the whole course of the river into the sea is free and not prohibited to any one in matter of commerce. The Lech and Waal are a continuation of the Rhine for Rhine states. Rhine boats may not be stopped or unloaded in the Netherlands and may use certain canals under the same terms as the Dutch. Only experienced captains to be allowed with licenses from Rhine states. Rhine boats to be on a footing of Dutch boats in regard to sea tolls and Dutch boats to navigate the tributaries of the Rhine freely. Boats must be examined annually.

1868. Navigation from Basel to the open sea free to ships of all nations. The Lech and Waal part of the Rhine. Rhine navigation boats may choose any way they please to cross Holland and enter the sea or Belgium. All boats of riparian states belong to the Rhine navigation. The treatment of national boats shall be given to Rhine boats reciprocally on the Rhine and its branches. License from a riparian state necessary for navigation of the Rhine and boats navigating the Rhine must be examined.

Danube

1856. Navigation of the Danube is free for vessels of all flags.

Congo

1885. Navigation of the Congo, its affluents, or roads, railroads and lateral canals constructed to improve transport where necessary on the Congo, etc. to be opened to the traffic of all nations.

Zambesi

1891. Navigation of the Zambesi, including Sheri and branches and outlets to be entirely free to the ships of all nations. The Portuguese government will permit and facilitate transit over these waterways and landways which supply means of communication where the rivers are not navigable. Merchant ships of the two powers, England and Portugal, to have equal freedom of navigation on these waters on the footing of equality, for direct navigation from the sea and for great and small coasting trade. Navigation shall not be subject to any restriction based on the fact of navigation.

Roads, wharves, railways or lateral canals built to correct imperfections of the river, etc. shall be open to the traffic of both powers.

Vienna, 1815

Navigation entirely free and not to be refused to any one in respect of commerce. No new special rights, such as the right to compel transfer of cargo, to be created and old ones to be preserved only where, and if, necessary for navigation.

Institute of International Law, 1888

Navigation free for all flags with perfect equality between subjects of riparian and other states. All vessels and tugs are to use all ports except that trade between ports in the same state may be reserved to boats of that state. No special rights of navigation are to be allowed and tributaries to be treated the same as the river.

*War**Elbe*

1844. Certain guarantees of the sum to be produced by the tolls for the benefit of certain small states are to cease in case of the blockade of the river and only the net toll to be paid them up to the amount of the guarantee.

Rhine

1804. Tolls to be freely collected and boats and persons in the toll service to be neutralized. The Rhine officials and the treasury to be safeguarded in case of war.

1831. Same provision.

Institute of International Law, 1888

In case of war between riparian states, floating property, neutral or enemy, shall be given the protection of enemy property in war on land. In war, navigation is free for neutral flags "subject to restriction enforced by the nature of things."

Congo Act, 1885

The provisions of the act of navigation of the river to remain in force in case of war, so navigation is free on the Congo for all trade, except transportation of contraband for a belligerent, also on roads, railroads, locks and canals affected by the treaty.

*Neutrality**Danube*

1866. The works and the establishments of the European commission can only be used for Danube navigation and for this object are placed under the safeguard of international law and are neutralized and in case of war shall be equally respected by both belligerents. The personnel is also neutralized, including the hospital personnel.

1871. All works establishments of the commission continue to enjoy neutrality to be respected in all circumstances by the contracting parties. The immunity extends to the

personnel of the commission. The Porte may send warships into the Danube as territorial power.

1878. Neutrality confirmed but warships prohibited below the Iron Gates, except the guard boats which may go as far as Galatz.

1882. A flag and arm band provided to assure neutrality.

Institute of International Law, 1888

All works and establishments for the benefit of navigation are neutralized, especially toll stations and their personnel.

Quarantine

Pruth

1886-1895. No sanitary measures are to be taken when there is no disorder in the Pruth or in territories on the Danube neighboring the Pruth. Sanitary stations are in the control of the local riparian authorities. In case of epidemics, except in the territories mentioned, then the riparian governments shall establish sanitary stations in the ports of the Pruth. It shall be properly organized and a regulation shall be drafted for application of these principles.

Po

1849. Ships to be quarantined at the mouth of the river only.

Scheldt

1839. Vessels to Antwerp shall be free but may be accompanied by sanitary guards.

Rhine

1868. Goods shall be free for transit except for sanitary regulations.

Danube

1856. Quarantine regulations to be as favorable to the circulation of ships as possible.

1866. Sanitary regulations continued to be drawn by the superior sanitary council at Constantinople so as to be fair to

trade. Boats descending the Danube free from sanitary regulation, and so are boats ascending from the sea so long as there is no epidemic in the orient. Such boats need only present a certificate of health to the authorities. In case of epidemic in the orient, quarantine of Soulina may be restored and boats from the sea after quarantine there cannot be required to undergo another quarantine up river unless there is an epidemic in European Turkey. Quarantine establishments are to be located where necessary on Turkish banks.

1882. Regulations. Sanitary regulations are to be drafted in collaboration with the European commission by the international council at Bucharest. All restrictive measures between ports to be withdrawn when an epidemic has become general on the banks of the river. The council at Bucharest shall arrange with the European commission in regard to the sanitary installation of Soulina.

Congo

1885. Quarantine to be established at the mouth of the river either by the riparian powers or by the international commission for vessels putting out as well as into the river.

Institute of International Law, 1888

Quarantines shall be established by the riparian states at the mouths of the river to control boats entering or leaving. The commission is to draft regulations.

International Sanitary Conference, 1913

It shall be the duty of the riparian governments to regulate the sanitary conditions of rivers by special agreements.

Judicial

Elbe

1821. Judicial officers of each toll station to judge navigation matters. [Appeal to the commission is not given]

1844. Regular river courts to be established with civil and criminal jurisdiction over navigation matters.

Pruth

1866-1895. Toll collectors are officers of judicial police for breach of toll regulations; inspector of navigation judges on breaches of navigation regulations with appeal to the mixed commission in three months.

Po

1849. Disputes in regard to navigation matters settled by chief customs official (local official) with appeal to the commission. Police matters are under the control of the local officers of the district in which the offense was committed.

Rhine

1804. The receivers at toll stations to punish breaches of convention, tolls and navigation police with appeal to the director general assisted by two inspectors and a final appeal to the Rhine commission.

1831. Each state to appoint special navigation judges to aid each toll station; decisions are executory in all the riparian states. Appeal to the central commission *or* a local appeal court.

1868. Local courts are provided for civil and criminal navigation cases. Appeal to commission or the higher local court. Decisions are executory in all states.

Danube

1860. Regulations are enforced by local authorities.

1864. Judgment of captain of the port and inspector general with appeal to the European commission or to a mixed tribunal which may be set up.

1866. Inspector general and captain of the port judge in first instance with appeal to the European commission.

NOTE.—This is very different from the Rhine and the judicial power is much more limited in its scope than that of the Rhine and Elbe courts which judge all matters, civil and criminal. These officers judge only offenses against regulations and have no civil jurisdiction to imprison or punish except to fine or take away licenses.

Institute of International Law, 1888

Special navigation courts or the regular local courts to decide on the basis of equality of all flags. Chief inspector fines for breaches of police and navigation regulations with appeal to the navigation courts or specially designated local courts or riparian commission.

*Ports**Rhine*

1831. Certain free ports are named where boats and goods pay no entry, export or transit dues, except regular port charges for conveniences. Each state to provide properly equipped ports; customs dues may be charged when goods are landed elsewhere.

1868. Free ports opened and maintained.

Pruth

1866-1895. The governments will increase as far as possible the number of ports of entry for the export and import of goods. Charges for works built by local authorities shall be only an equivalent of the service rendered and must be approved by the mixed commission.

Po

1849. Tolls for use of harbors and docks, including warehousing and port dues, to be fixed by the commission, and once fixed, unchangeable without consent of the states.

Congo

1885. Harbor dues for wharves, warehouses, etc. may be charged but shall be framed according to the cost of construction and maintenance and will be applied without regard to whence vessels come or what they are loaded with. Are fixed by the commission.

Institute of International Law, 1888.

Dues for use of port facilities only to cover cost and to be posted in all parts. To be drafted by a mixed commission of

the same for all, according to tonnage of boats. Cargo not to be discharged except in ports.

Pilotage

Scheldt

1839. Pilotage shall not be greater than created by the tariff of 1829. Vessels have free choice of pilots. Dues the same for all nations, to be fixed by both states.

Rhine

1831. Each state to control pilotage. Charges to be the same for all boats.

1868. Same.

Danube

Act of 1866. Pilotage regulations made by the European commission and pilots licensed by the commission.

Coasting Trade

See *Navigation*, especially Elbe and Institute of International Law.

Customs

Vienna

1815. Customs to be regulated so as not to interfere with navigation.

Po

1849. Four customs houses allowed on the river, one at mouth of the river, others at equal distances, as determined by common consent. Customs regulations must not interfere with free navigation.

Pruth

1866-1895. Customs lines follow the banks of the river, so boats in the stream are not subject to customs regulations. Ports of entry are to be increased and customs regulations are to be drafted so as to facilitate commerce.

Rhine

1831. Transit through without payment of customs, but customs paid on goods landed, except at free ports. Hatches may be sealed or guard installed in passing through territory of one state. No greater duty to be charged on goods coming by the Rhine than by land.

1868. Transit free, except for sanitary measures. The Rhine to be on equality with other means of transport. Customs on goods on the Rhine not higher than goods entering in other ways. Sealed hatches or guard may be required for transit through territory of one state.

Elbe

1821. The treaty does not affect entry or consumption taxes for goods leaving the river.

Institute of International Law, 1888

. Customs duties only on goods introduced into the territory. Boats are not to be stopped if the banks belong to different states, but if they belong to the same state may be sealed or a guard put on board.

The treaties referring to the Danube and Rhine are cited in the text. Citations for the others are given below.

Elbe

1821, Hertslet, *op. cit.*, vol. i, p. 672.

13 April, 1844, Neumann, *op. cit.*, vol. iv, p. 721.

1863, Neumann, *op. cit.*, N. S., vol. iii, p. 305.

Pruth

1866, Martens, *Nouveau Recueil general des Traités*, vol. xx, p. 296.

Po

1849, Hertslet, *op. cit.*, vol. ii, p. 1095.

Scheldt

1839, 19 April, Hertslet, *op. cit.*, vol. ii, p. 979.

United States—Great Britain

Canadian Boundary Waters.

1909, Mallory.

Treaties, etc., between the United States and other Powers, vol. iii, p. 39.

Vienna 1815, also Poland

Hertslet, *op. cit.*, vol. i, p. 75.

Institute of International Law

1888, *Annuaire de l'Institut*, 1887-8.

Memel

Martens, *op. cit.*, vol. viii, p. 300.

Congo

1885, Hertslet, *Map of Africa by Treaty*, vol. ii, p. 468.

Zambesi (1890)

Hertslet, *op. cit.*, vol. iii, p. 1016.

APPENDIX II

DOCUMENTS

- (a) PUBLIC ACT OF NOVEMBER 1, 1865, RATIFIED AT THE CONFERENCE OF PARIS ON THE 28TH OF MARCH, 1866.

[*State Papers*, vol. 55, pp. 93, 94, 99]

Art. I. All the works and establishments created in execution of Article XVI of the treaty of Paris of the 30th of March, 1856, with all belonging to or depending from them, shall continue to be devoted exclusively to the use of the navigation of the Danube, and can never be turned aside from this object for any motive whatever. To this end they are placed under the guaranty and protection of international law.

Art. XXI. The works and establishments of all kinds created by the European commission of the Danube, or by the authority which shall succeed it, in execution of Article XVI of the treaty of Paris, particularly, the navigation cash office at Soulina, and those which it may hereafter create, shall enjoy the neutrality stipulated by Article XI of the said treaty, and shall be in case of war equally respected by all the belligerents.

The benefit of this neutrality shall be extended, with the obligations which spring from it, to the general inspection of the navigation, to the administration of the port of Soulina, to the staff of the navigation cash office and seamen's hospital, and lastly to the technical staff charged with the superintendence of the works.

(b) REGULATION FIXING THE ORDER OF PROCEDURE OF THE
EUROPEAN COMMISSION OF THE DANUBE,
NOVEMBER 10, 1879.¹

I. *General Provisions*

Art. 1. Each regular full session is presided over by a delegate chosen by rotation, in the alphabetic order of the powers represented. Each delegate fills the office of president for one session. The special sessions are presided over by the president of the last regular session. When the delegate whose turn it is to be president is absent at the opening of the session, the office passes to the delegate next in line according to the alphabetic order, which can not be changed.

Art. 2. The president receives the credentials of new delegates. He calls the meetings and declares their opening and closure. He directs the discussions and establishes during the meeting the text of decisions and the results of the votes.

If one of the delegates requests, the roll is called in alphabetic order of the powers, except that the president, who takes the votes, casts his vote last.

Art. 3. During a regular full session the president supervises the drafting of the protocols, directs the secretariat, and signs the correspondence with the authorities.

Art. 4. The commission holds two regular sessions every year and assembles for this purpose in full session in the first weeks of the months of May and November.

Art. 5. The executive committee addresses to the delegates in the last of March and the 1st of September of each year a resume of the questions which are to be discussed in common at the next session. Every proposal submitted after that date is also brought promptly to the notice of all the delegates.

A proposal made in the course of a session can not, as a rule, be discussed in the session in which it is made.

¹ Sturdza, *Recueil*, *op. cit.*, p. 127; Sayre, *International Administration*, p. 182.

Propositions for an increase of toll on seagoing vessels can only be voted in the regular session following that in the course of which they have been made.

Art. 6. Delegates who do not attend a periodical session may vote in writing.

Art. 7. Article 5 only applies to regular sessions.

Art. 8. Regular sessions can only proceed if there are at least five delegates present.

There may be extraordinary sessions on a request supported by five delegates.

Art. 9. When the annual budget of receipts and expenses of the commission is not voted on in time, the budget of the preceding year remains in force till the next fall meeting.

Art. 10. A session is not considered as closed until the protocols of all the meetings have been approved by the delegates who have taken part in them.

A member of the commission may confide to one of his colleagues or to the general secretary the power of approving for him the protocols as drafted.

Art. 11. The proces-verbaux state the decisions of the commission and the deliberations that have preceded them.

Each delegate is entitled to have inserted in the protocol his vote by writing.

If the written vote is not formulated till after the meeting, delegates of a different opinion may have inserted their reserves on the points which, in their opinion, would not have been developed verbally by the delegate who has given his vote in writing.

If the deliberations relate to the service of the personnel and the administration, the protocols of the full sessions state simply the decisions taken, without mentioning the votes given for or against.

The discussion relating to such subjects is reproduced in detail in a separate report which is mentioned in the protocol and of which a manuscript copy is given to each delegate, for the information of his government, the minute remaining in the archives of the commission.

When a person other than a delegate gives verbal explanations during a full session, a resume of his communication is communicated to him for revision before being finally inserted in the protocol.

Art. 12 Decisions are by a majority of votes :

(a) When it is a question of form, in particular if it concerns the interior service of the commission, the relations of the commission with its employees, details of execution of measures decided upon in commission ;

(b) When it is a question of modifying the tolls of navigation established by virtue of article 16 of the treaty of Paris of March 30, 1856

On important questions (questions de fond) for which unanimity is required, decisions made unanimously by the delegates present become final two months after having been communicated to the absent delegates, unless a formal contrary vote is sent by one or several of these delegates before the expiration of the said period of two months.

II. *Executive Committee*

Art. 13. The executive committee is composed of all the members present at the seat of the commission, whatever their number and whatever the length of their stay.

If there is only one member present, he has by right full power to dispose of urgent matters.

Art. 14. The delegates present at the seat of the commission, in a minimum of three, as a court of the second and last instance, decide appeals to the commission from condemnations pronounced in police matters by the inspector of navigation and by the captain of the port of Soulina.

The appeal court is presided over by the delegate charged with the direction of financial affairs, or, if he be not present, by the delegate charged with the general direction of the administration.

Art. 15. The delegates present at the seat of the commission are charged by rotation for the period of one month, one with the general direction of the administration of the com-

mission, and another with the general direction of its financial affairs; the first acts with the title of administrative delegate (*delegue a l'administration*); the second under that of financial delegate (*delegue aux finances*).

When one of the two offices becomes vacant, it devolves on that one of the delegates present who has been the longest time without office.

The acceptance of an office does not imply the obligation to remain at the seat of the commission during the whole month.

Art. 16. The executive committee, when it thinks proper, draws up a *proces-verbal* of its deliberations. These *proces-verbaux* are entitled "*Proces-verbaux of the meeting of the executive committee of the European commission at the date of —.*" They are given a regular number, under which they are carried on the journal of the central bureau.

Art. 17. All directions, all orders (for supplies, work, etc.), instructions, and, in general, all dispositions originating in the executive committee are put in writing.

The minutes are signed by all the members present, but for current matters the signature of the two delegates in office is sufficient. All notes, letters, and instructions sent in relation to the general service are signed by the administrative delegate, and all relative to the operation of the treasury by the financial delegate; they are countersigned by the respective chiefs of service.

When a member of the committee by whom a document should be signed is absent, it may be signed by one of his colleagues.

Every signature by a delegate on any document, including pay orders from the commission, is preceded by the words "*For the European Commission of the Danube.*"

Art. 18. The executive committee consults the absent delegates on important questions.

If it makes decisions in case of emergency which exceed its executive capacity, it notifies without delay the absent delegates. Decisions of the committee are by a majority in every case in which, for decisions of the same character in the full meetings, a majority would suffice.

But if, on the contrary, questions are raised for which the unanimity would be necessary in a full meeting, the committee in case of urgency refers the question by telegram to the absent delegates, whose answer is awaited for 10 days. If there be no answer within this time, the committee is authorized to put its decisions into execution.

Art. 19. The administrative delegate supervises especially the work of the secretariat.

Art. 20. Letters, acts, and documents addressed to the commission or to the executive committee are opened by the delegate present in the office; if no delegate be present, the general secretary opens papers received and has them entered in the journal or register.

Important papers are circulated among the delegates present.

At the end of each month the general secretary sends to the delegates who do not reside at the seat of the commission, in a circular, a copy of the record with the documents entered and with a summary mention of the decisions arrived at; but this extract does not include documents concerning current matters or those whose communication would not interest the absent delegates.

Art. 21. When a delegate who is alone at the seat of the commission has the intention of leaving, he notifies his colleagues by telegraph as soon as his intention is fixed, and if no one of them is able to take his place, he turns over the direction of affairs to one of the chiefs of service at Galatz, who directs current affairs and supervises the carrying out of the decisions of the full commission under his own responsibility; he signs all documents, including pay orders.

III. *Accounts*

Art. 22. The accounts of the commission are kept in double entry. The financial delegate directs and supervises especially the financial part of the affairs of the commission.

Art. 23. In particular he makes sure that expenses are regular and are charged correctly against the credits in the

annual budget and sees that these credits are not exceeded within express authority, either from the executive committee or from the commission in full session, according to the dispositions of the following article.

Art. 24. When the financial delegate determines that a credit voted will probably be exhausted before the time fixed he refers the matter to the committee, which decides if it is necessary to suspend the expenditure relating to that credit or to open a supplementary credit. Supplementary credits may be opened by the executive committee without the necessity of consulting the absent delegates when those credits are charged on the general fund put at the disposition of the committee in each budget for emergencies or on the different sums allowed for the different branches of the service.

If, on the contrary, the supplementary credit would have the effect of increasing the general total of the expenses carried on the general budget of the year, this credit, whatever be its amount, can only be opened by the vote of the commission in full session or with the unanimous and preceding assent of the absent delegates requested in conformity with the dispositions of the last paragraph of article 18 of the present regulation.

This last disposition is not applicable, however, to financial measures which may be the necessary consequence of an emergency decision made by the committee in virtue of the power given to it by the second paragraph of article 18 of the present regulation.

The executive committee can not transfer credits to the different articles of the budget.

Art. 25. The orders of payments are made by the executive committee on the central treasury of the commission and on the subtreasuries. The minutes of the orders of payments are signed by all the members of the committee and the documents sent by the financial delegate.

No expense may be approved by the committee as a gift, even within the limits of the credits in the budget, without a vote of the commission in full session, except the small gifts,

that it is usual to grant to inferior employees when they are discharged or in case of the death to the widow or children or grants of a similar nature made from special pilot funds.

The committee designates to the accountants the chiefs of service, who have power to issue orders for payments, and regulates the form of those orders. It also determines the article of the budget or the specifications on which the chiefs of service are authorized to assign directly the expenses. Except in case of article 21, no chief of service may be given the general authorization of approving all open credits.

Art. 26. An examination of the operations of the central treasury is made at dates which are not fixed, but at least once a semester by the financial delegate assisted by at least one of the other delegates.

An examination of the operations of the other accountants, a check of the inventories of the material existing and in use, and of the pay rolls of the workmen are made at least once each semester by a delegate acting in the name of the executive committee, who may require the assistance of an employee of the financial service.

An account is made to the commission at each full meeting of the verifications made during the previous semester. The control which the director of the central bureau of accounts is required to exercise is regulated by his instructions.

The commission gives a final discharge to the director of the central treasury on the basis of a verification made by at least two delegates and to the other accountants on the report of the financial delegate, who in his work is assisted by the director of the central bureau of accounts.

Art. 27. The proposed budget of each year is regularly prepared by the executive committee to be presented to the delegates at their regular meeting in the autumn of the preceding year.

The reports of a budget to be discussed may be chosen outside of the executive committee.

Art. 28. The regulation of the 1st of May, 1872, is abrogated, with all modifications, and the present regulation enters in force on this day.

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